No:

IN THE SUPREME COURT OF THE UNITED STATES

Prasad Bikkani ---Petitioner

v.

Rotan E Lee
North East Ohio Neighborhood Health Services (NEON)
Total Health care Plan, Inc (THCP)
Scheur Management Group (SMG), Barry Scheur, Robert McMillan, Robert Eichler, and Jimmy Dee
Ruth Aaron
Brenda Stevens Marshall and Frank Kimber
Moreno Miller
Paula Phelps
Arnold Pinkney/Beptin & Associates Inc
Joseph Davis
Matthew T. Fitzsimmons

Respondents

For Writ Of Certiorari
To The Court of Ohio Supreme Court
Case No. **2008-1667**

Prasad Bikkani, **Pro Se (Attorney Breen is not registered with US Supreme Court, will find soon an attorney for US Supreme Court though Petitioner's 12/5/2008 heart attack and multiple hospital admissions prevented sofar)**
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QUESTIONS PRESENTED:

Whether Ohio Vexatious and Frivolous charges are appropriate when a materially falsifying attorney controls the courts one court against the another court (trial court, appeal court, Ohio Supreme Court) to use opinions/decisions contrary to the facts with half-truth to no truth and whether Due Process and constitutional rights can be protected with self dealing attorneys.

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Note: For referencing convenience the following notation was used:
CAJE: Journal Entry and Opinion No. 89312 Journalized July 7, 2008, attached as A to Ohio Supreme court filing, Appendix Q
D1806: Exhibit X means Exhibit of December 18, 2006 filing on OH2006-2073
D0506: Exhibit X means Exhibit of December 5, 2006 filing.

I. Jurisdiction of the case:

The instant NEON/THCP case involved with Constitution Due process. With the pattern of materially false acts, Trustee cum attorney Fitzsimmons directly involvement in operations under projectSlim fast and terminated Petitioner's employment, **Appendix M, Z, AA.** Trustee Fitzsimmons selected petitioner and others for discharge in a discriminatory way and crippled THCP, **Appendix AD-AJ,** and hired Christina Burke in petitioner's place, **Appendix AC**. Even trustee Fitzsimmons withheld earned unused vacation amount over $20,000, **Appendix N**, as if the waiver requirement is mandatory even to pay unused vacation for a 40+ age category, etc. Petitioner in the trial court listed over 380 patterns of corrupt activities, listed over 40 predicate acts, and listed over 35 Disciplinary Rule violations of Trustee Matthew Fitzsimmons. However, the trial court did not conduct a hearing for Attorney disqualification and trustee Fitzsimmons continued to misrepresent the facts by submitting materially false affidavit, **Appendix O**, and by working with severe conflicts. Petitioner thought of taking help from the Appeal court or to request to modify the law.

Unfortunately, petitioner faced the misrepresentation of facts by Trustee cum attorney Mr. Fitzsimmons in the higher courts to get sanctioned against the Petitioner and he keep misrepresenting the

facts and using one court against another court. For example, in Ohio Supreme court *Bikkani V. Lee* et al (OH 2006-2302, OH2006-2073), Mr. Fitzsimmons falsely and intentionally claimed as if he never been a party in the trial court of in the Appeal court but as if Petitioner added Mr. Fitzsimmons as a party in the Ohio Supreme Court only and obtained sanctions and got the petitioner declared as if vexatious litigator. Those sanctions and getting declared as a vexatious litigant in Ohio Supreme court, trustee Fitzsimmons used it in the Appeal court to get declared as Vexatious and as if the trial court abused the discretion, **CAJE-Appendix Q, R.** However, the Appeal court did not mind Mr. Fitzsimmons falsely claiming as if he never been a party to get sanctions against petitioner but simply stated as if Mr. Fitzsimmons is a party or as if petitioner sued the Defendant's attorney without mentioning the trustee role [thus listed in the caption in this certiorari] and or his personal and operational roles. It is to this honorable court to determine as to what is happening naturally as Judges didn't detect the material misrepresentations of Mr. Fitzsimmons or with some influence, but the research indicates that Mr. Fitzsimmons's wife is an Ohio Supreme Court committee member and as if his relative is an Appeal court Judge.

Petitioner contacted NEON/THCP "employer" by certified mails dated 1/7/ 2004 and 12/27/2004 for the promised but failed payment on claims, **Appendix** U-W, by CEO Willie Austin on behalf of NEON/THCP. Ultimately, Willie Austin, CEO responded by mail on 3/22/2005, **Appendix N.** Thus, enough notice was given to the employers/trustees and the law suite is not any surprise. Moreover, When Mr. Austin set up a meeting at his office following the law suite, he admitted that years of delay of not paying the agreed amount is in a hope of statutes expiry, please see 6/26/2006 filing in the trial court. The respondent has an **Officer/Director** capacity,

being as Vice President capacity at the time of employment termination, and Petitioner **did not** file law suite under any derivative claim. In September 6, 2005 filing, trustee cum attorney Fitzsimmons submitted an affidavit to the court claiming as if Mr. Bikkani was never an employee of NEON, **Appendix O**, which is contrary to the fact. On October 10, 2005, Mr. Fitzsimmons issued a letter stating as if the law suite is a surprise to him and to his clients, as if he is representing only NEON/THCP, whether the Petitioner is willing to drop NEON/THCP to proceed against Scheur Defendants etc, claming as if Petitioner is not an employee of NEON during 1999. **See Appendix J**.

Even if NEON terminated the Petitioner's employment prior to 1999, as claimed by Mr. Fitzsimmons' letter dated 10/10/2005 stating "You were not employed by NEON in 1999", **Appendix J**, while claiming not employed by NEON at all, **Appendix O**, NEON claimed parent-child relationship per Secretary of State, and Mr. Fitzsimmons claimed subsidiary relationship with regulators, **Appendix AG**. The unsettled petitioner' claims, **Appendix U-W**, became the responsibility of THCP/NEON.

Per Matthew Fitzsimmons's admission, all the defendants in the instant case are his clients, **Appendix M**. Mr. Fitzsimmons did not produce any waivers while representing some clients against others in the instant case or while representing other clients using THCP/NEON as if actual clients. Mr. Fitzsimmons converted THCP into NEON in 2001 without the knowledge of THCP Board of trustees, who are his clients, and too testified with Ohio Attorney General/Ohio Department of Insurance representatives in favor of NEON **without disclosures as to THCP is his client or without disclosing, as he is a board of trustee of NEON, Appendix AG**. During February 2000, prior to crippling THCP, NEON/trustee Mr. Fitzsimmons

obtained a million dollars THCP note waiver through Scheur Group/Rotan Lee, **Appendix AF**, without the knowledge of THCP trustees, while pretending as if Mr. Fitzsimmons representing THCP, which contributed to crippling of THCP without operating balance. The Disciplinary Rules and ethical standards looks good on the paper but in the instant case and in Miles Landing case it is unconscionable to get petitioner victimized.

Discovery was attempted in the instant trial case but NEON/THCP Board of trustee cum attorney Matthew Fitzsimmons blocked the depositions and he filed for protective order in 2005 itself. By late 2006 when materially falsified exparte communications of April 2005 were came to knowledge in the Miles Landing v. Vijaya Bikkani et al, which caused severe harm and similar patterns and or severe conflicts of interests became evident in the instant case, Petitioner moved to Appeal process to request to modify the law. To the credit of Trustee cum attorney Fitzsimmons aggressive misrepresentations [and perhaps though influence] he obtained sanctions against Petitioner both in Appeal court and in Ohio Supreme Court cases *Bikkani v. Lee* et al (OH 2006-2302, OH 2006-2073, US S.Ct 07-271 Certiorari denied).

During the above appeal process, when the Appeal court denied the appeal during October 2006, the trial court denied the petitioner's continuance motion for discovery and without giving any wait time for petitioner's deposition, on October 3, 2006 the trial court dismissed Petitioner's Complaint with prejudiced based upon, pursuant to Ohio Civ. R. 41(B)(1)." The trial court never addressed the substantive merits of Petitioner's core claim of wrongful termination and in that same entry declared Defendants pending motion for summary judgment moot.' **See, Prasad Bikkani v. Rotan** E. Lee, et al., case no. CV-05-566249, Court of Common Pleas Cuyahoga County, Ohio.

At least 5 times Trustee Matthew Fitzsimmons filed for sanctions and for attorney fees against Petitioner including on 11/29/2005 and on 12/1/2005 (both denied on 5/30/2006), on 6/9/2006 and 10/30/2006 (both denied on 12/18/2006), and on 1/8/2007 that was denied on 1/10/2007. These requests and rerequests were for sanctions, attorney fees, court costs and expenses against Petitioner alleging that his actions were "frivolous" within the meaning of the frivolous conduct statute, O.R.C. § 2323.51. NEON and THCP appealed to the Eighth Appellate District on January 17, 2007. The Petitioner did not receive NEON/THCP Appellate Brief and on some day and missed filing the reply BRIEF in a timely manner. When Plaintiff petitioned for leave of Appeal Court, the court denied and subsequently denied hearing from Petitioner in November 2007. Since request and rerequests were made by NEON/THCP, the January 17, 2007 appeal is out of date as the initial sanction requests were denied on 5/30/2006 itself. Moreover, the January 17, 2007 filing date is past 30 days from the date of dismissing the case. On December 13, 2007, Attorney Kevin Breen entered an appearance in the appeal on behalf of petitioner and moved for leave to file an opposition brief *instanter*. On January 7, 2008 the Court of Appeals denied that motion. On July 7, 2008 the Court of Appeals reversed and remanded the case to the trial court.

During early 2007, upon getting paid for the Appeal Court sanctions by Petitioner to the Defendants/Matthew Fitzsimmons, they maintained the lien and able to make them as parties to a lawsuit surprisingly initiated by WM Specialty Group (for AmeriQuest) v. Vijaya Bikkani, Miles Landing et al (CV07-620252 8th Dist). Prasad Bikkani for Dower rights only, even prior to paying the NEON/THCP the Lien, it was not at all on that property yet NEON and THCP became parties. While Trustee cum Attorney Fitzsimmons Answering the WM Specialty case, he

submitted the satisfied lien yet he stated to continue through the discovery and asked court to award his expenses, **Appendix K, L.** Mr. Fitzsimmons as a trustee controller of THCP and NEON and he acts as alter ego of corporations for his pecuniary benefit and it may be one of the unique cases where an attorney hat was that well misused. Mr. Fitzsimmons stated in Bikkani v. Lee et al (US Supreme Court 07-271) as if the Miles Landing cases are unrelated to him yet he like to harass Petitioner's wife too by sitting through unrelated cases, **Appendix K, L.** During the same time, to further harass and to intimidate, using Miles Landing against the unit where the *Miles Landing v. Vijaya Bikkani et al* (Cv04-519870, 8th District ct) another case was initiated in Matthew Fitzsimmons's wife's Rocky River Municipal Court against Bikkanis. To combine AmeriQuest and Miles Landing cases and to consolidate the parties, Petitioner moved the cases to US Federal court.

In a further surprising an unknown attorney to Bikkanis, Attorney Gary Cook without the knowledge or consent of Bikkanis got dismissed with prejudice the Federal Court case. Upon inquiry learned, Gary Cook had a criminal record USA v. Cook 1:98 cr –00-200-DCN-1 and as if he had a business relationship with Attorney Matthew Fitzsimmons. Upon the Rocky River court case got reverted back and Judge Donna Fitzsimmons (wife of Matthew Fitzsimmons) recused herself from the case stating her husband representing/ associated with the Plaintiff of that case [Miles Landing] and by citing the conflicts of interest. During the same time, Trustee cum attorney Fitzsimmons initiated a new case in the Cuyahoga common Pleas court against Petitioner and against his wife Vijaya Bikkani seeking to label them as "vexatious litigators" under O.R.C. § 2323.52. Trustee cum attorney is further harassing the petitioner and his family, to keep collecting money from Mr. Fitzsimmons's controlled clients (THCP/NEON) and or from the victims,

such as Bikkanis. Attorney Kevin Breen was engaged by Bikkanis to defend that separate lawsuit **Northeast Ohio Neighborhood Heath Services. Inc., et al. v. Prasad Bikkani, et al** case no. CV 07-628928 (Court of Common Pleas, Cuyahoga County, Ohio).

According to Tiffany McDaniel, Mr. Bikkani had by far and away the most superior knowledge of the computer system at NEON and/or THCP (McDaniel Tr. at 32). This opinion was shared by Donald Butler, former Chief Operating Officer of THCP (Butler Tr. at 65-66; 75). Matthew T. Fitzsimmons who is serving and or bringing lawsuits using THCP/NEON names has been serving on the Board of Trustees since 1996 or 1997. (Austin Tr. at 17). His firm, Nicola, Gudbranson & Cooper are the "consulting lawyers" for NEON and Total Health Care. (Austin Tr. at 16). Trustee cum Attorney Fitzsimmons specifically advised THCP on how to implement a reduction in force referred to as "Project Slimfast". Attorney Fitzsimmons' participation, by his own words, included identifying which persons would be terminated from the organization, **Appendix M.**

(Butler Tr. at 85; Exhibit 13). (Boldface added). **Plaintiff Prasad Bikkani was terminated from his employment during "Project Slimfast.** Mr. Butler had a great deal of respect for Prasad (Butler, Tr. at 65-66). When Mr. Bikkani was terminated from his employment he was replaced by a younger African-American woman named Christina Burke, **Appendix AC.** By all accounts, Ms. Burke had no computer skills compared to Prasad Bikkani. (McDaniel Tr. at 14-15, 64-65). Rumors persisted at NEON and THCP that Christina Burke had a romantic relationship with Rotan Lee, NEON's Chief Executive Officer at the time. (McDaniel Tr. at 69). Approximately 85% of the employees at THCP and NEON were African American. (Willie Austin Tr. at 59) (Donald Butler Tr. at 96-97); (Evelyn Armstrong Tr. at 63-65). Rotan Lee believed that these companies were for

the benefits of blacks (Tiffany McDaniel Tr. at 110). Mr. Lee and others often talked about how he didn't like Prasad Bikkani and that he "smelled". (McDaniel Tr. at 40, 58).

Mr. Austin testified that he believes that Mr. Bikkani's filing of a wrongful termination action was frivolous even though he does not know why Mr. Bikkani was fired. (Austin Tr. At 77-78). Moreover, Mr. Austin testified that the law suite brought against Mr. Bikkani and his wife Vijaya Bikkani by Mr. Matthew Fitzsimmons using NEON/THCP as plaintiffs was without the knowledge of the board. It confirms that board of trustee cum attorney Matthew Fitzsimmons acting as alter ego of corporations, violating IRC 4941(D) with his self dealings ahead and further victimizing the petitioner.

II. Statement of the case with Introductory Statement about the methods used by trustee cum attorney Matthew Fitzsimmons along with forbidden IRC4941 (d) self-dealings

Trustee cum attorney Fitzsimmons submitted materially false affidavit in September 2005 to the trial court and continue to represent with his self dealings, with protective order in violation of attorney-fraud exception, getting stricken the summons tendered by Sheriff to him, **D1806: Exhibit C**, obstructing depositions by other board members, acting with IRC4941(d) forbidden self-dealings, acting on behalf of all Board members/trustees, avoiding disclosures, representing against the clients, violating 35 Disciplinary Rules, over two dozen parties of conflicts of interest, constitutional violations.

Punishing the innocent victim by classifying as vexatious and or with expenses and too not allowing an evidentiary hearing or due process and too against the evidence present thus violated many constitutional rights

including the **Sixth Amendment**, with unusual punishment to victims who stand against unlawful acts by sacrificing many things as some attorneys intentionally involved for their purpose: Mr. Fitzsimmons successfully converted THCP into NEON fold, even by misrepresenting to Ohio Attorney General's office, Ohio Department of Insurance etc by claiming as if NEON is a parent of THCP, when in fact rivalries per their own communications, D1806: **Exhibit H-Exhibit O, Appendix AJ** and too conversion without the knowledge of THCP Board of Trustees and with materially false information's. Mr. Fitzsimmons' SMG who are parties in the instant case are facing criminal charges on 14 counts and got convicted on many counts in Louisiana, *United States v. Scheur et al* (Louisiana, CR07-169), which includes wire fraud, mail fraud, conspiracy, USC §371, USC §1341, USC §1342, and USC §1343.

Some of the Matthew Fitzsimmons involvement issues namely are with the supporting hundreds of paragraphs, D1806 filings:

As the evidence is in front of court, Matthew Fitzsimmons in collaboration with other **personally selected** and ousted Petitioner unlawfully, **Appendix M**, he acted in operational duties and not as an attorney for a company, D0506: **Exhibit R.** Matthew Fitzsimmons is a trustee of a corporation, NEON, D0506: **Exhibit A Para I (3)** of John Campbell's July 21, 1999 letter is further evidence which states in part "that an "alliance document" was to result from discussions between Mr. Lee **and our Trustee, Mr. Fitzsimmons" [**emphasis added] and the NEON board/officers expected him to be interacted with THCP as a trustee of NEON and without self-dealings and there are no disclosures from him to NEON's board as if he had a self business with THCP to oust Petitioner from THCP payroll and or from NEON payroll, but he did without corporate formalities either. Mr. Fitzsimmons submitted a materially false affidavit in September 2005,

D1806: Exhibit D in contrary to **D1806: Exhibit E**, and submitted to court and caused perjury, in an effort to dismiss the case then stating Petitioner was never an employee of NEON/formerly known as CNHSI, because he had pecuniary benefit in ousting Petitioner, D1806: **Exhibit A, Exhibit E9-E10**, and decided to discredit to cause perjury in the court; when in fact hired by NEON, formerly known as CNHSI, **D1806: Exhibit E1-E6**.

III. Questions Presented & ARGUMENT:

QUESTIONS PRESENTED:

Whether Ohio Vexatious and Frivolous charges are appropriate when a materially falsifying attorney controls the courts one court against the another court (trial court, appeal court, Ohio Supreme Court) to use opinions/ decisions contrary to the facts with half-truth to no truth and whether Due Process and constitutional rights can be protected with self dealing attorneys.

Argument:

A) Due process and constitutional rights during the appeal process as self dealings attorney involved with serious misrepresentation of facts

The Due process, fair trail, and constitutional rights are further violated when petitioner sought justice in good faith from Appeal court in late 2006. The appeal court did not take up the petitioner's appeal in late September 2006. Then trustee Fitzsimmons made trial court to dismiss the case for seeking appeal and the trial court on or around 10/3/2006 denied the pending petitioner's motion for continuance and simultaneously dismissed the case with the stated reason as "lack of prosecution." The dismissal order stated dismissal against all the parties and all the claims, meaning dismissal against defaulted parties too. Then using the trial court dismissal of the case, trustee cum attorney

Fitzsimmons filed for sanctions against petitioner in the appeal court in the same case where the appeal court denied the case to look into it on the constitutional grounds or modify the law that brought by petitioner but accepted Mr. Fitzsimmons's motion for sanctions by claiming as if the appeal is frivolous. When the petitioner came to Ohio Supreme court, *Bikkani v. Lee* (OH 2073) trustee cum attorney Fitzsimmons made his name removed from the party list dismissing/denying the ceritory for original interlocutory appeal where the opponent counsel violated about 34 Disciplinary Rules and had over two dozens of conflicts of interests/parties yet harshly punished victim through monetary sanctions and declaration as vexatious litigant.

Trustee cum attorney Fitzsimmons's 1/11/2007 filing of OH2006-2302 Page 12 states in part:

> "...Petitioner filed three appeals with the Eighth District -- all of which were dismissed for lack of final appealable orders. See, *Miles Landing Homeowners Ass'n v. Bikkani* (8th Dist. June 29, 2006), 2006 WL 1781226, 2006-Ohio3328 (CA-05-863356 and CA-05-86942), and CA-05-86747 which is not reported..."

Similarly, in 1/11/2007 filing of OH2006-2703, Mr. Fitzsimmons filed starting last para of Page 7:

> "...Petitioner also repeatedly filed frivolous appeals with the Eighth District and Supreme Court in that case. During a four-month period in that case, Petitioner filed three appeals with the Eighth District -- all of which were dismissed for lack of final appealable orders. See, *Miles Landing Homeowners Ass'n v. Bikkani* (8th Dist. June 29, 2006), 2006 WL 1781226, 2006-Ohio3328 (CA-05-863356 and CA-05-86942), and CA-05-86747 which is not reported..."

Trustee cum attorney Fitzsimmons knew that he materially falsified the information as habitual and as listed other scenarios under hundreds of counts, by stating that

> "all of which were dismissed for lack of final appealable orders. See, *Miles Landing Homeowners Ass'n v. Bikkani* (8th Dist. June 29, 2006), 2006 WL 1781226, 2006-Ohio3328 (CA-05-863356 and CA-05-86942)..."

Infact the above quoted case was appealable and even oral hearings were conducted by the appeal court, though they gave priority to Ohio RC 5311.18 over federal supremacy laws that involved bankrupt chapter 7/liquidated/defunct/ DEAD MLHOA/BVHA/BVCUOA corporation(s) and Ohio supreme court declined jurisdiction stating lack of interest/priority. **Miles Landing attorney monopolized through self dealings like Trustee Matthew Fitzsimmons, erased employer's hard drive and concealed about $600,000 payable amount by JM Capital, conflicts of interest client against Miles Landing, *In re. J.M. CAPITAL, LTD.* (Bank. NE Dist of Ohio, Case No. 08-20123), Appendix S, T, which should serves as a further warning to the instant representation by Matthew Fitzsimmons with severe conflicts of interests.**

Moreover, trustee cum attorney Fitzsimmons **knowing** that Ohio Supreme Court already made decision by 12/27/2006, in his 1/11/2007 filing of OH2006-2073 p8 stated as if the "...Supreme Court has not yet accepted or dismissed...", to make it appear as if Petitioner's MLHOA Supreme court appeals are pending:

> "...On September 11, 2006, Petitioner filed a Notice of Appeal with the Supreme Court with regard to the Eighth District's Orders in Case Nos. CA-05-863356 and CA-05-86942. The Supreme Court has not yet accepted or dismissed that appeal. The

> similarities between Petitioner's conduct in Miles Landing and this case are remarkable: defamatory and unsubstantiated accusations, outlandish claims, motions to disqualify and to disbar opposing counsel, and improper appeals of orders that are patently not final and appealable..."

Mr. Fitzsimmons is known for altering the facts based upon the convenience. Like it was stated in the past, it is not an issue whether it is important to have Mr. Fitzsimmons as a party in the Supreme Court docket but the facts are important. In Mr. Fitzsimmons filing in 12/6/2006 of OH2006-2073, to remove his name he claimed as if

> "...Matthew T. Fitzsimmons is and has been since pro se Petitioner-Petitioner Prasad Bikkani initiated this case at the trial court, counsel of record for NorthEast Ohio Neighborhood Health Services, Inc. ("NEON") and Total Health Care Plan, Inc."

The above filing is false and part of appeal is to reinstate him as a party, meaning he was a party before getting stricken. Moreover, Mr. Fitzsimmons couldn't cite any reference where an Petitioner can not name the summons served party (whether later stricken or not) during the appeal process similar to the instant case or any case for that matter, please see page 1 of 12/6/2006 filing of OH2006-2073 yet influenced the court and unfortunately made Petitioner declared as vexatious and it should be reversed.

The appeal court stated as if Matthew Fitzsimmons was a party to the case but did not mind Mr. Fitzsimmons misstating the record in Ohio Supreme court to get sanctions against Petitioner by claiming as if he never a party. With those Ohio Supreme court sanctions he fed the Appeal court and got obtained additional sanctions.

Court of Appeals commits error when it concludes that a *pro se* litigant engaged in "frivolous conduct" and determines that the trial court abused its discretion in denying, without a hearing, an untimely motion for sanctions and attorney fees.

Without question, the Court of Appeals has already concluded that Mr. Bikkani has engaged in frivolous conduct notwithstanding that the hearing necessary for this determination has not occurred. Reciting selected filings made by Mr. Bikkani in the wrongful termination case, the Court states as follows: "Here, the trial court never held a hearing on NEON's and THCP's requests for attorney fees and costs under R.C. 2323.51 and Civ. R. 11, despite the overwhelming evidence of frivolous conduct throughout the litigation. The record clearly evidences frivolous conduct as well as an arguable basis to impose sanctions under Civ. R. 11. (App. A at 11-12). The court concludes by ordering that the trial court conduct an evidentiary hearing to reconsider an award of attorney fees. The Court states that it expresses no opinion as to whether the attorney fees sought are necessary or reasonable, a matter left to the sound discretion of the court. Id at 14. Even this conclusion, however, is undercut by the Court's earlier statement that, "... Bikkani's conduct not only delayed the proceedings but it forced NEON and THCP **to incur additional expenses by having to respond to such misconduct".** CAJE at 13.. Boiled to its essence, the Court of Appeals has already concluded without a hearing that: Mr. Bikkani had engaged in vexatious conduct. Thus the "evidentiary hearing" which the court now orders is really nothing of the sort but rather a tabulation of Defendants reasonable expenses and attorney fees as an appropriate sanction. For the reasons, which follow, Appellant respectfully submits that the trial court, in fact, soundly and reasonably exercised its discretion in denying Appellees

motions for sanctions and that there was no abuse of discretion, notwithstanding the appellate court's contrary determination. CAJE:at 10-11. Further, Ohio Supreme Court has apparently never concluded, as the Court of Appeals did, that O.R.C. § 2323.51 applies an objective standard to determining frivolous conduct as oppose to a subjective one used under Civ. R. 11. CAJE: at 7-8. No authority from Ohio Supreme Court is cited.

If the Court of Appeals is correct, then it should be unlawful for any Pro Se or attorney to proceed notwithstanding Constitutional rights to do so when an opposing attorney manipulates the facts and violates all kind of Disciplinary rules in an unconscionable way. The Appeal court judgment entry contradicts with the record, some samples were attached in the Appendix, those exhibits were discussed in the first section, and many more examples can be cited from the record.

Ohio vexatious statute may not be constitutional to declare petitioner as vexatious on appeal while help was sought on Due process, to avoid severe conflicts of interests. The decisions associated with the instant case conflicts with decisions of Federal courts and many state courts of last resort as they do not allow trustee cum attorney who caused the underlying case to be continued to represent in the court to further undermine the judiciary system especially when involved in causing the underlying case. In the instant case trustee cum attorney Matthew Fitzsimmons represented with over 35 Disciplinary Rule violations, with dozens of conflicts of interests/parties/issues, many patterns of corrupt activity out of which about 380 of them are listed, *Bikkani v. Lee* (8th Dist. Cv05-566249, CA88650, CA89312, OH 2006-2073, OH 2006-2302) in an attempt to disqualify him though not successful. Mr. Fitzsimmons, principal/NEON board member, being involved in wrongful acts, should not have represented NEON/THCP, and or other NEON board members with conflicts of

interest, materially altered facts, knowingly and willfully violated to erode confidence in judiciary system. The Ohio Supreme Court held a quarter century ago that overruling of motion to disqualify counsel is not order made in special proceeding thus is not final appealable. *Bernbaum v. Silverstein* (1980) 62 Ohio St 2d 445, 406 N.E.2d 532 and the decision were well supported based upon understanding that bar association deals with any impropriety of attorney and not knowing to this extent like in the instant case or like in MLHOA case attorneys involve so deeply to forbidden self deals serving and not knowing that Ohio Disciplinary counsel does not involve while case is in progress. Due to these new constraints, to seek justice, Petitioner with good faith came to Appeal court and Supreme Court and too seek any modification of law if the existing law does not support. The issue presented is of broad concern and the questions raised in the petition are of consequence to the Federal government too.

The current experience brings a questions that whether trustee cum attorney Matthew Fitzsimmons extended his illegal acts and acts on behalf of others in concert into the court room, unlike in *United Air Lines, Inc. v. Evans*, 431 U. S. 553 (1977), and Mr. Fitzsimmons's continuation of representation under attorney hat through IRC 4941(d) forbidden self-dealings and manipulation of facts with false affidavit and other means gave "present effect to its past illegal act and thereby perpetuated the consequences of forbidden unlawful practices". The Petitioner does not meet the RC2323.51 (A) frivolous conduct.

Victim/petitioner's Due process rights were violated, where expected the protection and assistance, by punishing rather than rewarding for the sacrifice and for the good faith effort, both by Appeal court and further punishment by Ohio Supreme court just because an attorney who is a member of US Supreme Court had high

influence over the Ohio court system as he was able to conceal the facts in furtherance of his pecuniary benefit and can go to any extent by engaging in a conduct unbecoming a member of the Bar of the court.
In order to be declared the petitioner as vexatious litigant RC 2323.52 (A) was not satisfied and also conduct was not found as frivolous per RC 2323.51 other than belief by court based upon half-truth to no truth statements by trustee cum attorney Fitzsimmons to cover-up his tracks. The Appeal court failed to conduct a hearing to declare frivolous and award sanctions as required by RC 2323.51, nor conducted a hearing by Supreme court before deciding in favor of RC 2323.52 and or other procedural requirement to determine rather than believing appeal's court judgment that is already in violation of RC 2323.51 without following the needed requirements.

Trustee cum attorney Fitzsimmons's conduct is frivolous and in violation of RC 2323.51(A)(2)(a) to obviously serves merely to harass or maliciously injure petitioner, to cover-up his acts, it is not warranted under existing law and cannot be supported by a good faith argument for an extension, modification, or reversal of existing law. Moreover, petitioner's conduct is not in question per RC 2323.52 and rather Trustee cum attorney Matthew Fitzsimmon's conduct is Vexatious and petitioner's conduct is to serve justice by getting protection from trustee cum attorney Matthew Fitzsimmons's harassment and from his malicious acts to injure to the petitioner as he violated RC 2323.52(A)(2)(a). Trustee cum attorney Matthew Fitzsimmons's conduct is not warranted under the existing law and can not be supported by a good faith argument for an extension, modification, or reversal of existing law, thus he violated RC 2323.52(A)(2)(b) and not the other way around against such conduct of petitioner. Trustee cum attorney Matthew Fitzsimmons's conduct is with obstruction of justice and solely for the delay thus he violated RC

2323.52(A)(2)(c). Trustee cum attorney Matthew Fitzsimmons's conduct meets RC 2323.52(A)(3) "Vexatious litigator" definition as he has habitually, persistently, and without reasonable grounds engages in vexatious conduct and he represented himself as Pro Se in the instant case when he was named as a party and served the Summons with Sheriff (though he refused to accept the tendered service and filed various motions to remove his name).

This case deserves appropriate treatment as one of the great importance of public interest and involved with substantial constitutional issue, Due process violations, prejudice, and constitutional amendment violations. With a good faith Petitioner brought to the court's attention for justice, Attorney Fitzsimmons should not be rewarded for wrongdoing with bill/sanctions against Petitioner, and judgments should be in Petitioner's favor. Petitioner had meritorious claim, with half-truths and in violation of dozens of Disciplinary rules and pertinent laws Attorney who is a Board of Trustee caused tortious interference, ousted Petitioner even whom represented in the past, caused victim in the process, and continue to cause damages by repeatedly filing with half-truths. It leads to violation of **amendment VIII** with excessive fine/punishment imposition for honesty and for attempting to get justice served. It is violation of amendment IX to punish in violation of **amendment VIII** when sought justice and for punishing the innocent party. It is in violation of **amendment XIV** without due process for fair Trial while trustee cum attorney Mr. Fitzsimmons representing himself to cover-up facts with materially false affidavit, dozens of conflicts of interests as if he is representing NEON and THCP by converting rival THCP into NEON and representing against petitioner to whom he represented in the past and other over a dozens parties and too to be responsible for the underlying case through

intentional and tortious interference with petitioners employments activities with NEON/THCP.

IV. Conclusion:

Based upon the above pleading and with the support of past filings, some of the issues rise through Attorney Fitzsimmon's cum Board of trustee raises issues like:

A) Whether a board of trustee, as a General counsel in combination with causing for the underlying case through violation of laws and in further violations while pretending to be an attorney of purported corporations (i) can materially participate for pecuniary benefit against corporation/client, (ii) can materially participate in unlawful termination of employees in concert with third parties, (iii) can materially participate in submission of wrong information/financial statements to corporation through third parties, iv) can participate in conversion of corporation against board of trustees, v) can materially participate in the conversion of funds; and still can represent in the subsequent lawsuit against a victim/Petitioner not only with conflicts of interests but also with further pecuniary benefit and to suppress/alter facts, vi) Whether an attorney in conjunction with the above violations/characteristics can submit to the Trial court: a) materially falsified affidavit, b) half truth pleadings, c) evade deposition, d) obtain protective order, for further pecuniary benefit and to protect all his past clients who happened to be over a dozen defendants in the instant case and attorney being a party to the lawsuit can refuse the summons and can represent in the case.

B) Whether an attorney in conjunction with the above violations/characteristics can participate in hundreds of corrupt activities; when sought help from Appellate court then can present half truth to the court to obtain sanctions against victim/Petitioner then continue

to represent in Supreme court with half truths as if the Petitioner is vexatious

C) Whether the parties can be represented by an attorney of the above violations/characteristics along with an attorney/group of another attorney's extension

D) Whether Appeal court lacks jurisdiction/ appealable matter to review even when the same court considered Mr. Fitzsimmons/NEON/THCP's motion to impose sanctions against Petitioner/victim when sought justice within the existing law, or to modify the existing law to protect community.

E) Whether a trustee cum attorney of a non-profit corporation can avoid disqualification from a case which was actually originated through his underlying Federal violation against victim along with others in concert, and by using the judiciary system and

a) Can he advance his personal interests in violation of forbidden IRC4941 (d) self-dealings, b) Can he submit materially false affidavit to obstruct justice and to offend the victim and the judiciary system, c) Can he violate **Fourteenth** Amendment and **Sixth** Amendment besides **Canon 5, Canon 4, Canon 9**, and about 35 DR violations with dozens of conflicting of interests/parties, d) Can he benefit for his advantage using another case where petitioner is a victim along hundreds of others, which involved with violation of crimes, constitutional violations including the violation of Federal Supremacy laws even with Bankrupt/DEAD/ Liquidated Corporation, e) Can he turn victim into further victimization by using above violations plus for sanctions, to declare as vexatious litigant, and to cause to dismiss the case when infact the results should be other way around.

Petitioner filed an Action on his own behalf, on behalf of employer THCP/NEON. The complaint includes breach of fiduciary duty, conversion, receipt of an unlawful distribution of assets, action false/misleading financial statements, action on conversion, reinstatement,

retaliatory/unlawful termination, action on material falsification, etc. Petitioner filed disqualification of Attorney Matthew Fitzsimmons arguing first that Mr. Fitzsimmons had a conflict of interest by way of Mr. Fitzsimmons's role as corporate counsel to THCP/NEON, Board member of NEON/THCP (Claimed NEON as a member of THCP), represented Petitioner and other employees, represented other defendants, as a party to the lawsuit and served summons, involved in crimes and too involved in unlawful discharge and other allegations of the complaint and evaded deposition and still a witness in the litigation. As the record indicates, a past attorney-client relationship existed between Petitioner and Attorney Fitzsimmons; the subject matter of those relationships is substantially related; and Mr. Fitzsimmons acquired confidential information from Petitioner and supports Attorney Fitzsimmons disqualification, *Dana Corp. v. Blue Cross & Blue Shield Mut. of N. Ohio* (C.A.6, 1990), 900 F.2d 882, 889; *Mentor Lagoons, Inc. v. Rubin* (1987), 31 Ohio St.3d 256. Mr. Fitzsimmons eluded as if Petitioner brought the derivative lawsuit for hundreds of employees and there by on behalf of corporation asking the corporate counsel to be disqualified. Though generally, a party on the outside of an attorney-client relationship "lacks standing to complain of a conflict of interest in that relationship." *Morgan v. North Coast Cable Co.* (1992), 63 Ohio St.3d 156, 159, it is true if an attorney never represented a client or stranger to the attorney-client relationship to complain any of the conflict of interest. It is not the case with Petitioner and Mr. Fitzsimmons represented Petitioner. Attorney Fitzsimmons's representation of the corporation is substantially/directly related. In such circumstances, though, whether Attorney ultimately is a material witness in the litigation does not matter, *Patrick v. Ressler* (Sept. 28, 2001), Franklin App. No. 00AP-1194, the factual context of his prior representation of

THCP/NEON and the factual context of the present case create a relationship substantial enough to justify disqualification. Furthermore, Mr. Fitzsimmons is a board member, represented all the defendants, a party to the current lawsuit, altering evidence, materially participated in illegal activities including in retaliation and unlawful termination of Petitioner for his pecuniary benefit.

Moreover, Petitioner has brought the action on behalf of the corporation after giving series of notices/communications to nonprofit corporation/board of directors. As the corporation's counsel, it is presumed that Attorney Fitzsimmons received confidential information, *Brant v. Vitreo-Retinal Consultants Inc.* (April 3, 2000), Stark App. No. 1999CA00283 and the subsequent representation by Mr. Fitzsimmons is not vicarious but primary and unlike a need to presume the received confidences as rebuttable, *Brant v. Vitreo-Retinal Consultants, Inc.* (Apr. 3, 2000), Stark App. No. 1999CA00283, discretionary appeal denied, 90 Ohio St.3d 1402. Under the given circumstances, Appeal court current ruling and Ohio Supreme court denial to take up the case are unfortunate to rule in favor of Mr. Fitzsimmons'/NEON/THCP. This great injustice is the further consequence of pecuniary benefit involved and the parties who involved in the underlying case representing the case with half truths and this case is unique for the final appealability or to modify the law accordingly and the victim/Petitioner should not be penalized for the good faith efforts and too in view of great loss already suffered through.

As stated earlier Mr. Fitzsimmons, and other attorneys/firms violated **Fourteenth Amendment** and **Sixth Amendment** besides **Canon 5**, **Canon 4**, **Canon 9**, and other DR violations. NEON's **Board member/Trustee** Mr. Fitzsimmons is a fiduciary or trustee to Petitioner, *Hafter v. Farkas*, 498 F.2d 587, 589

(2d Cir. 1974). In the instant case the violations are much beyond any case ever come to in front of court and involved many conflicts and constitutional violations and caused severe injustice to Petitioner and to the judiciary system itself. Matthew Fitzsimmons himself has a competing attorney-client privilege with THCP, NEON, THCP Board, NEON Board, Petitioner, other defendants of the instant case, and even breaching the fiduciary relationship he had with Petitioner, to continue to cover-up violations. Attorney Fitzsimmons/Board member severely violated Disciplinary Rules and Fiduciary duties for over a dozen defendants in the instant case and to Petitioner as all are his clients/ex-clients/ or express attorney-client relation, thus strict standards of **Canon 5** is applicable. Mr. Fitzsimmons has been privy to THCP, NEON, Dr. Marshall, Mr. Kimber, Mr. Lee, Mr. Scheur, Ms. Aaron, SMG, Mr. McMillan, Ms. Phelps, Mr. Pinkney, Mr. Davis, and Petitioner's; confidences, thus violation under **Canon 4** and Mr. Fitzsimmons should have been disqualified from representing the defendants in the instant case. In the course of the former representation Mr. Fitzsimmons acquired information related to the subject matter of his subsequent representation, and Mr. Fitzsimmons should be disqualified under **Canon 9** of the Code of Professional Responsibility, *Emle Industries Inc.* v. Patentex Inc., 478 F.2d 562 (2nd Cir. 1973), *Kala v. Aluminum Smelting & Refining Co., Inc.* (1998), 81 Ohio St.3d 1 at 5. As a matter of fact, attorney Mr. Fitzsimmons, Attorney Dennis Roth, Attorney Brian Green violated **Canon 4, Canon 5** and **Canon 9**. Attorney Brian Green is an attorney of disqualified Attorney Dennis Roth. It is clear that under **Canon 9** as well as **Canons 4 and 5**, Matthew Fitzsimmons should be disqualified. Similarly the **Canon 4** of the Ohio Code of Professional Responsibility imposes a duty on Matthew Fitzsimmons, and on Dennis Roth to protect THCP's, Petitioner's, THCP Board of Trustees, NEON's, and SMG

defendants as all of them have privity with them confidences and secrets including to related to Petitioner's wrongful termination claim, *State ex rel. Leslie v. Ohio Hous. Fin. Agency*, 105 Ohio St.3d 261, (2005); DR 4-101(A); *Kala v. Aluminum Smelting & Refining Co., Inc.* (1998), 81 Ohio St.3d 1. Using the direction in Disciplinary Rule **5-105(D)** and by **Canon 9**'s warning that "A Lawyer Should Avoid Even the Appearance of Professional Impropriety" Mr. Fitzsimmons getting violated in all aspects.

Mr. Fitzsimmons improperly defending/defended against the disqualification motion, with serious disregard for the orderly process of justice, without a colorable basis in law, and causing a harsh blow to the process as it "will have a profound chilling effect upon victims/litigants and would interfere with the presentation of meritorious legal questions. In an idealized world, victim would have bowed out, but reality dictates that great injustice the proper course was to appeal or to get reviewed/modified the law as this kind of case never occurred before. The way Mr. Fitzsimmons involved continued to conceal facts is nothing less than an insult to the doctrine of stare decisis and a slap in the face of the adversary process, *Overnite Transp. Co. v. Chicago Indus. Tire Co.*, 697 F.2d 789 (7th Cir. 1983).

Unfortunately, Mr. Fitzsimmons contaminating the law of attorney disqualification, which is a fundamental importance to the legal community and to our society. Mr. Fitzsimmons using confidential information that he has obtained from a client against that client on behalf of another one and representing an adversary of his former clients of the subject matter of the two representations is not just "substantially related," but same. Mr. Matthew Fitzsimmons not only had access to but also received confidential information of **Petitioner**, THCP, board of directors, officers, to NEON, board of directors, officers, and above a dozen defendants in the instant case. In the

instant case Mr. Fitzsimmons and his firm popped up as counsel to an adversary of Petitioner, and other defendants following illegal conversion of THCP under NEON and representing against THCP board of directors officially. Thus Mr. Fitzsimmons's interference under the name of an attorney to two defendants in the instant case is not just the representations that are substantially related to past services/obtained confidences from others but totally and directly related. Consistently with this distinction, *Westinghouse Elec. Corp. v. Kerr-McGee Corp.*, 580 F.2d 1311, 1321 (7th Cir. 1978) -- like this is a case where the same law firm represented adversaries in substantially related matters -- states that it would have made no difference whether "actual confidences were disclosed" even if the law firm had set up a "Chinese wall" between the teams of lawyers working on substantially related matters, though the two teams were in different offices of the firm, located hundreds of miles apart. Mr. Fitzsimmons couldn't have created a Chinese wall in his mind between his multiple violations with various clients. Since it is a direct relationship, substantial relationship inquiry is not needed.

The fact that Mr. Fitzsimmons made stubbornness in resisting disqualification is improper, *Analytica, Inc. v. NPD Research Inc.*, 708 F.2d 1263 (7th Cir. 1983). Somehow **Appeal court and this court** got influenced by Mr. Fitzsimmons and awarded sanctions against Petitioner even without taking up the case to which Petitioner sought justice on basic principle of law, fairness to all litigants believing that fairness requires that any law firm and/or individual of professional impropriety, questionable ethics, or misconduct with the given the opportunity to rebut any and all adverse inferences which may have arisen by virtue of a prior filings.

Unfortunately, instead of Matthew Fitzsimmons getting disqualified, innocent Petitioner get sanctioned, suffered due process, due process guarantees,

fundamental fairness to victims/litigants, *Lassiter v. Dept. of Social Services*, 452 U.S. 18, 24 (1981). In the instant case not only the counsel/Mr. Fitzsimmons changed the sides in representing against some other client also involved as a party, involved with dozens of serious violations of the Code of Professional Responsibility with a clear unrebutted factual basis. Even just where "the firm itself changed sides", without having a need to have other conflicts such as in the instant case, the law firm was disqualified, *Analytica, Inc. v. NPD Research Inc.*, 708 F.2d 1263 (7th Cir. 05/31/1983). Unfortunately, Mr. Fitzsimmons's interest happened to be in violation of retaining client by way of controlling the board as a board of trustee and in denying a serious breach of professional ethics which outweighed any felt obligation to 'come clean ' by ignoring as officers of the court though generally most of the attorneys are trustworthy, *The Lawyer's Obligation to be Trustworthy when Dealing with Opposing Parties*, 33 S.C.L. Rev. 181 (1981). It is not a serious and studied disregard for the orderly process of justice. There is a legal basis for original position, material misrepresentation and cover-up involved as alleged whether that position was found to be legally correct/incorrect thus can not be characterized as lacking justification but Matthew Fitzsimmons is vexatious and representing his controlled clients to protect his improper acts, *Overnite Transp. Co. v. Chicago Indus. Tire Co.*, 697 F.2d 789 (7th Cir. 1983). In *Overnite Transp.*, the Petitioner brought suit based on a novel interpretation of the Interstate Commerce Act, not previously addressed in published case law. The district court granted the defendant's motion to dismiss, and on appeal the 7th Cir. Court affirmed then the district court granted the defendant's motion for an order assessing attorney's fees against the Petitioner's attorneys, finding that the attorneys had acted vexatious in instituting the lawsuit. On appeal from the attorney fee award, the 7th Cir. Court

held that the district court had abused its discretion. In the instant case, the victim/Petitioner deserves the fees, award, and not Mr. Fitzsimmons under the name of THCP/NEON to get sanctions against Petitioner. Disciplinary counsel should be allowed to investigate the serious violations. As the issues for posed for consideration, Attorney Fitzsimmons should be disqualified/disbarred and he even blocked discovery from board of trustee MT Miller to cover his tracks, and as a Trustee himself should not be tortuously interfering corporate matters for his self-dealings.

The legal profession demands adherence to the highest standards of honesty and integrity. It is a fact that any sanction is an indelible stain on lawyer's as well on Petitioner's record and by balancing these considerations, the court can find that Attorney Fitzsimmons's misconduct is highly egregious than other sanctioned attorney's acts/omissions including, *a public reprimanded Ohio State Governor Taft for his lapses in disclosures* under violation of DR 1-102(A)(6) (prohibiting conduct that adversely reflects on a lawyer's fitness to practice law), *Disciplinary Counsel v. Taft*, 858 N.E.2d 414, 112 Ohio St.3d 155 (2006). The court can decide whether to impose any sanction at all or not but Petitioner requests court to review the facts. There is no doubt that duties violated by Attorney Fitzsimmons, often willfully, caused injury with aggravating factors and he did not dispute such violations other than just bluntly blaming on Petitioner for the harm he did to his numerous clients.

Mr. Fitzsimmons created victim, submitted materially false affidavit to court, had many violations including deliberately withholding that which by law they were required to reveal; *Disciplinary Counsel v. Wrenn*, 99 Ohio St.3d 222, 2003-Ohio-3288, 790 N.E.2d 1195 (six-month stayed suspension imposed for assistant county prosecutor's concealment of exculpatory evidence in a

criminal case), and *Disciplinary Counsel* v. Jones (1993), 66 Ohio St.3d 369, 613 N.E.2d 178 (six-month actual suspension imposed for assistant county prosecutor's failure to advise court in criminal prosecution that he had found previously misplaced evidence that was potentially exculpatory or mitigating).

Attorney Fitzsimmons forced Petitioner to keep disclosing violations of Mr. Fitzsimmons while he keep feeling the filed facts tend **to effect Mr. Fitzsimmons**, he knew that Petitioner was forced to plead with facts without malice or falsity where actual malice essential to feel improper against Petitioner, *Hahn v. Kotten* (1975), 43 Ohio St.2d 237, 244. To the extent Petitioner has to disclose violations of others and or corporation or his clients' are due to Mr. Fitzsimmons's continued evasion of facts and his continued shifting of blame on Petitioner in an effort to cover-up his tracks at the expense of Petitioner and all other parties. In fact, Petitioner believes that Attorney is the one who is acting with **actual malice.**

In the instant case, Attorney Fitzsimmons neglected **16** clients, and made false statements. Attorneys indefinitely suspended in the similar or lesser cases where an attorney repeatedly neglected multiple clients', made false statements and or acted dishonestly: *Disciplinary Counsel v. Golden*, 97 Ohio St.3d 230, 2002-Ohio-5934, 778 N.E.2d 564, *Dayton Bar Assn. v. Shaman* (1997), 80 Ohio St.3d 196, 685 N.E.2d 518, *Akron Bar Assn. v. Snyder* (1997), 78 Ohio St.3d 57,676 N.E.2d 504. Attorney Fitzsimmons is a Board of Trustee for nonprofit corporation(s) NEON/THCP. While serving in that noble position of public trust he himself violated the law and flouted the rules that regulate the legal profession. By doing so, he betrayed his principal duty as an Attorney -- and he undermined the public's faith in both the legal profession and our system of justice. As detailed above, Petitioner does not have Frivolous conduct nor vexatious

conduct and even those statutes requirement was not followed by courts during the process other than just believing in materially false allegations of trustee cum attorney Fitzsimmons, submitted improper billing, and the listed hundreds of violations are just some of the reasons attorneys who involved with their self-dealings, pecuniary benefit should have removed from the case and he should be disciplined.

Being Trustee, Matthew Fitzsimmons tortiously interfering business relationships, controlling the corporation(s) for his pecuniary benefit, with the forbidden self-dealings, Attorney Fitzsimmons is manipulating the events as he deems fit. Mr. Fitzsimmons should not be rewarded for wrongful acts but he should be disciplined. Matthew Fitzsimmons' bills should not be rubbed on victim/petitioner.

Hope there are Fiduciary duties, accountability; breach of fiduciary duty, privity, malpractice, malicious acts and all those plays a role along with the constitution rights of victims. Trustee cum Attorney Fitzsimmons should be disciplined with dozens of Disciplinary rule violations listed above. If not sanctions to attorneys like Matthew Fitzsimmons, what else an attorney should do to get sanctioned and how the attorneys who got disciplined for lesser violations than Trustee cum Attorney Fitzsimmons can get justice and the attorneys who are obeying laws and Disciplinary Rules get justified for not having violations by leaving whom victims brought forward even at great sacrifice. Trustee cum Attorney Fitzsimmons should be disciplined with his vexatious conduct and judgment against victim/Petitioner should be reversed to the benefit of justice.

In the instant case, trustee cum attorney Fitzsimmons represented with 35 Disciplinary Rule violations, over two dozen conflicting issues/parties, used the MLHOA case appeals of petitioner to his advantage to claims as if appeals are frivolous and if petitioner is

vexatious and got monetary sanctions too to cover-up his IRC 4941(d) forbidden self dealings, further affected and raised the questions about jurisdiction of US Supreme Court, legal authority of Federal Government over sates through Federal Supremacy laws, constitutional guarantees of citizens. But by Mr. Fitzsimmons materially falsifying the facts in the instant case to cover-up his tracks and courts getting influenced and declaring Petitioner's claim/appeal as frivolous even without the court following the frivolous statute requirements and declaring as vexatious and penalizing is in violation of Amendment **VIII** with excessive fine/punishment imposition for honesty and for attempting to get justice served. Moreover, it is in violation of Amendment **IX** to punish in violation of Amendment VIII when sought justice and for punishing the innocent party. It is in violation of amendment **XIV** without due process for fair Trial while trustee cum attorney Mr. Fitzsimmons representing himself to cover-up facts with materially false affidavit, dozens of conflicts of interests as if he is representing NEON and THCP by converting rival THCP into NEON and representing against petitioner to whom he represented in the past and over a dozens parties who are his confidents but by representing one against other as it deems fit to him and too by being responsible for the underlying case cause through intentional and tortious interference with petitioner's employments activities with NEON/THCP. .

WHEREFORE, for the reasons discussed above, this case involves matters of public and great general interest and constitutional and due process effects. Petitioner respectfully requests that this Court grant jurisdiction so that these important and relevant issues will be reviewed on the merit and looking forward to find an attorney who can represent in front of this honorable court.

Respectfully submitted,

Prasad Bikkani, Pro Se, 3043 Forestlake Dr
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Prasadbabu@aol.com

Certificate of Service

Per instructions received, all the parties ever served in the trial court were listed in caption and mailed the foregoing copies by U.S. mail on 2nd day of February 2009.

Prasad Bikkani, Pro Se

In addition served Ohio Attorney General as constitutional issues involved and forwarded a copy to Petitioner's attorney Kevin Breen.

Richard Cordray Ohio Attorney General **State Office Tower** 30 E. Broad Street, 17th Floor Columbus, OH 43215-3428 (614) 466-4320	Kevin J. Breen, Esq. 3500 W. Market Street Akron, OH 44333 Phone: (330) 666-3600 Facsimile: (330)-670-6556 Email: kevin.j.breen@gmail.com

The foregoing was mailed to the Respondents to the Following address(es):

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Barry Scheur, SMG, Robert McMillan, Jimmy Dee, & Robert Eichler One Gateway Center Ste 810 Newton, MA 02458	Paula M. Phelps 4530 Warrensville Center Rd, 103 F Cleveland, OH 44128
	Matthew T. Fitzsimmons **25 West Prospect Ave, Suite 1400** Cleveland, OH 44115 (216) 621-7227

APPENDIX A

THE Supreme Court Of Ohio

Prasad Bikkani
V.
Rotan E. Lee, Esq., et al.

Case No. 2008-1667
ENTRY

On March 5, 2007, this Court found Prasad Bikkani to be a vexatious litigator under S.Ct.Prac.R. XIV(5)(B). This Court further ordered that Bikkani was prohibited from continuing or instituting legal proceedings in this Court without first obtaining leave. On August 21, 2008, Bikkani submitted a notice of appeal and memorandum in support of jurisdiction but failed to first seek leave of the Court. Upon consideration thereof, It is ordered by the Court, sua sponte, that the notice of appeal and memorandum in support of jurisdiction are hereby stricken. Accordingly, this cause is dismissed.
(Cuyahoga County Court of Appeals; No. 89312)

THOMAS J. MOYER
Chief **Justice**

Filed/Docketed August 26, 2008

APPENDIX B

THE Supreme Court Of Ohio

Prasad Bikkani

V. Case No. 2008-1667

Rotan E. Lee, Esq., et al.

ENTRY

On March 5, 2007, this Court found Prasad Bikkani to be a vexatious litigator under S.Ct.Prac.R. XIV(5)(B). This Court further ordered that Bikkani was prohibited from continuing or instituting legal proceedings in this Court without first obtaining leave. On September 8, 2008, Bikkani submitted a motion for leave to file a motion for reconsideration. Upon consideration thereof,
It is ordered by the Court that the motion is denied.

(Cuyahoga County Court of Appeals; No. 89312)

THOMAS J. MOYER
Chief **Justice**

Filed/Docketed September 12, 2008

APPENDIX C

Case 2:07-cr-00169-EEF-JCW Document 395 Filed 11/12/2008

MINUTE ENTRY

FALLON, J. NOVEMBER 12, 2008

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF LOUISIANA

UNITED STATES OF AMERICA

VERSUS CRIMINAL ACTION

BARRY S. SCHEUR NO. 07-169

SECTION: L

BEFORE JUDGE ELDON E. FALLON

Case Manager: Gaylyn Lambert

Court Reporter: Karen Ibos

Appearances: James Brown, Esq., Shaun Clarke, Esq. and Kerry Murphy, Esq. for defendant

AUSA Dall Kammer, Joe Capone and Mimi Nguyen for government Probation Officer

SENTENCING as to counts 1, 2, 5, 6, 11, 12, 13 & 14 of the Third Superseding Indictment:

Defendant is present.

The government's objections to the PSI are addressed and resolved.

The defendant's objections to the PSI are addressed and resolved.

Sentence: See Judgment in a Criminal Case.

The defendant is allowed to self-surrender on January 8, 2009.

The defendant is released on present bond.

JS-10: :57 **Filed/Docketed November 12, 2008**

Case 2:07-cr-00169-EEF-JCW Document 395 Filed 11/12/2008

MINUTE ENTRY

FALLON, J. NOVEMBER 12, 2008

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF LOUISIANA

UNITED STATES OF AMERICA

VERSUS CRIMINAL ACTION

BARRY S. SCHEUR NO. 07-169

SECTION: L

BEFORE JUDGE ELDON E. FALLON

Case Manager: Gaylyn Lambert

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Appearances: James Brown, Esq., Shaun Clarke, Esq. and Kerry Murphy, Esq. for defendant

AUSA Dall Kammer, Joe Capone and Mimi Nguyen for government Probation Officer

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Defendant is present.

The government's objections to the PSI are addressed and resolved.

The defendant's objections to the PSI are addressed and resolved.

Sentence: See Judgment in a Criminal Case.

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The defendant is released on present bond.

JS-10: :57 **Filed/Docketed November 12, 2008**

Case 2:07-cr-00169-EEF-JCW Document 392 Filed 11/12/2008 Page 1 of 12

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

UNITED STATES OF AMERICA * CRIMINAL DOCKET
VERSUS * NO. 07-169
BARRY S. SCHEUR, ET AL. * SECTION "L" (2)

ORDER & REASONS

Before the Court is the Government's Motion for a Preliminary Order of Forfeiture (Rec.Doc. 297). On June 26, 2008, the Court held a forfeiture hearing and took the matter under submission. For the following reasons, the Government's Motion is GRANTED IN PART. The Court will issue an appropriate Preliminary Order of Forfeiture.

I. BACKGROUND

On April 27, 2007, the Government filed a Third Superseding Indictment against the Defendants, Barry Scheur, Robert McMillan, Rodney Moyer, and Danette Bruno. The 14-count indictment charged the Defendants with conspiracy, mail fraud, and wire fraud, all in violation of Title 18, United States Code, Sections 371, 1341, 1342, and 1343. In connection with the indictment, the Government also filed a Notice of Forfeiture pursuant to Title 18, United States Code, Section 981, made applicable through Title 28, United States Code, Section 2461. In the Notice of Forfeiture, the Government states that, in the event of a guilty verdict, it will seek "any and all property, real or personal, which constitutes or is derived from proceeds traceable to violations of Title 18, United States Code, Sections 1341 and 1343."

Shortly before the date of trial, Defendant Rodney Moyer pled guilty to Count One of the Third Superseding Indictment, which charges the Defendants with knowingly and willfully combining, conspiring,

confederating, and agreeing with each other to devise a scheme to defraud and obtain money and property, specifically from The Oath, The Oath's insureds, and The Oath's medical service providers, by means of material false and fraudulent pretenses, representations and promises, by misleading the LDOI into believing that The Oath was meeting the statutorily required minimum net worth of $3 million, and thereby unlawfully enriching themselves through the continued operation of The Oath, specifically by continuing to collect premiums from the insureds and continuing to collect management fees from The Oath, during a time when the Oath was not meeting the statutorily required minimum net worth.

(Third Superseding Indictment ¶ 19.)

On April 28, 2008, the jury trial began as to the three remaining Defendants—Barry Scheur, Robert McMillan, and Danette Bruno. On May 8, 2008, after both parties had made their closing arguments, the Court delivered the jury charges and the jury retired to deliberate. On May 12, 2008, the jury returned its verdict, finding Defendant Barry Scheur Guilty as to Counts 1, 2, 5, 6, and 11 through 14; Defendant Robert McMillan Guilty as to Counts 1, 5, and 14; and Defendant Danette Bruno Not Guilty as to all Counts.

II. PRESENT MOTIONS

...

(Signed by Judge ELDON E. FALLON)

[Cite as *Ohio Consumers' Counsel v. Pub. Util. Comm.*, 105 Ohio St.3d 1211, 2005-Ohio-1023.]

OHIO CONSUMERS' COUNSEL, APPELLANT, *v.* PUBLIC UTILITIES COMMISSION OF OHIO, APPELLEE.

[Cite as *Ohio Consumers' Counsel v. Pub. Util. Comm.*, 105 Ohio St.3d 1211, 2005-Ohio-1023.]

Motions to dismiss granted.

(No. 2004-1227 — Submitted January 18, 2005 — Decided March 23, 2005.)

APPEAL from the Public Utilities Commission, Nos. 03-1459-GA-ATA, 94-987-GA-AIR, 96-1113-GA-ATA, and 98-222-GA-GCR. ON MOTION TO INTERVENE and MOTIONS TO DISMISS.

{¶ 1} The motion to intervene as appellee by Columbia Gas of Ohio, Inc., is granted.

{¶ 2} On July 29, 2004, appellant filed a notice of appeal. The notice of appeal did not include the certificate of filing required by S.Ct.Prac.R. XIV(2)(C)(2). Accordingly,

{¶ 3} IT IS ORDERED by the court, sua sponte, that appellant's notice of appeal be, and hereby is, stricken.

{¶ 4} IT IS FURTHER ORDERED by the court that the motions to dismiss of the Public Utilities Commission and Columbia Gas of Ohio, Inc. be, and hereby are, granted.

{¶ 5} ACCORDINGLY, IT IS FURTHER ORDERED by the court that this cause be, and hereby is, dismissed.

MOYER, C.J., LUNDBERG STRATTON, O'CONNOR, O'DONNELL and LANZINGER, JJ., concur.

RESNICK and PFEIFER, JJ., concur in part and dissent in part.

SUPREME COURT OF OHIO

PFEIFER, J., concurring in part and dissenting in part. **{¶ 6}** Ohio Consumers' Counsel ("OCC") filed a notice of appeal with this court and with the Public

Utilities Commission's ("PUCO") docketing division on July 29, 2004. OCC failed to include a certificate of filing as required by S.Ct Prac.R. XIV(2)(C)(2) and a case-information statement as required by S.Ct.Prac.R. II(6). PUCO contends that OCC's failure to include the certificate of filing and the case-information statement should result in the dismissal of the case. OCC contends that its failure is technical and did not prejudice PUCO and, therefore, should be overlooked in this instance.

{¶ 7} "[T]he fundamental tenet of judicial review in Ohio [is] that courts should decide cases on their merits." *State ex rel. Wilcox v. Seidner* (1996), 76 Ohio St.3d 412, 414, 667 N.E.2d 1220, citing *DeHart v. Aetna Life Ins. Co.* (1982), 69 Ohio St.2d 189, 192, 23 O.O.3d 210, 431 N.E.2d 644. "Judicial discretion must be carefully—and cautiously—exercised before this court will uphold an outright dismissal of a case on purely procedural grounds." *DeHart*, at 192, 23 O.O.3d 210, 431 N.E.2d 644. Unfortunately, this court today comes down on the side of hypertechnical obeisance.

{¶ 8} S.Ct.Prac.R. XIV(2)(C)(2) states, "In an appeal from the Public Utilities Commission * * *, the notice of appeal shall also contain a certificate of filing to evidence that the appellant filed a notice of appeal with the docketing division of the Public Utilities Commission * * *." OCC should have included a certificate of filing; it didn't. The reason for the certificate, however, is to ensure that a notice of appeal was filed with the docketing division of the PUCO; the notice of appeal was so filed.

{¶ 9} PUCO was on notice of the appeal and has not argued that it was prejudiced by OCC's failure to include the certificate of filing. This case should serve as an opportunity for this court to remind parties to routinely check for new rules. S.Ct.Prac.R. XIV(2)(C)(2) had been in effect less than a month when OCC failed to follow it. See 101 Ohio St.3d CLXI. At most, we should rule that

S.Ct Prac.R. XIV(2)(C)(2) will be strictly enforced from this date forward. Unfortunately, this case will illustrate this court's slavish devotion to a nonsubstantive rule.

{¶ 10} S.Ct.Prac.R. II(6) states, "In all appeals filed in the Supreme Court, the appellant shall file, in addition to the other documents required by these rules, a case information statement at the time the notice of appeal is filed. The statement shall identify the issues and applicable law presented for review * * *."

Again, OCC should have complied with the rule; it did not. Again, PUCO was not prejudiced, and, again, we should not slavishly apply technical requirements that do not entrench on substantive issues.

{¶ 11} Finally, PUCO did not raise these technical arguments until over four months had passed. This fact alone suggests that PUCO was not prejudiced, as any real prejudice would have been apparent months earlier. It also suggests that PUCO may have delayed asserting these violations until after they could have been corrected. Because of the technical nature of the violations, they could have been easily and quickly corrected had OCC been informed of the violations by either this court or PUCO.

{¶ 12} Cases should be resolved on the merits; that is a fundamental tenet of Ohio case law. I would overlook the technical violations in this case because they did not prejudice the adverse party.

{¶ 13} I concur with the court's decision to grant the motion to intervene. Accordingly, I concur in part and dissent in part.

RESNICK, J., concurs in the foregoing opinion.

[Cite as *Ohio Consumers' Counsel v. Pub. Util. Comm.*, 105 Ohio St.3d 1211, 2005-Ohio-1023.]

APPENDIX G
(Docketed on September 30, 2005)
COURT OF COMMON PLEAS
CUYAHOGA COUNTY, OHIO

PRASAD BIKKANI, Plaintiff CASE NO. CV-05-566249
V.
ROTAN LEE, Esq, et al JUDGE DAVID T. MATIA
Defendants

MEMORANDUM OF LAW IN SUPPORT OF DEFENDANT, ROTAN E. LEE, ESQUIRE'S MOTION T[O] DISMISS COMPLAINT FOR FAILURE TO STATE A CLAIM UPON WHICH RELIEF CAN BE GRANTED

I. PLAINTIFF'S COMPLAINT

Plaintiff alleges Defendant Cleveland Neighborhood Health Services, currently known as North East Ohio Neighborhood Health Centers, and Defendant Total Health Care Plan, Inc. (here after THCP) hired him in October of 1994 [Complaint at ¶3]. Then, in February 1999, THCP hired the Defendant Scheur (Barry S. Scheur, Esquire, Scheur & Associates, Inc, and Ruth M. Aaron) along with several other named Defendants, including Defendant Lee, as consultants [Complaint at ¶¶11, 20]. . Plaintiff further alleges that beginning in February 1999, and continuing until February 2000, Defendants Scheur along with several other named Defendants, including Defendant Lee, used THCP to engage n several fraudulent and corrupt activities [Complaint at ¶¶18, 19]. Plaintiff alleges he was "wrongfully" terminated on June 25, 1999 at which time he was over forty (40) years of age [Complaint at ¶1].

Plaintiff filed his Complaint on June 27, 2005, more than six (6) years after the date of his termination. The Complaint appears to set forth several causes of action based on the following legal theories: (1) employment discrimination based on age, race, and national origin,

(2) wrongful termination, (3) retaliatory action in violation of federal and state whistleblower statutes, (4) sexual harassment, (5) hostile work environment, (6) violation of RICO and the Ohio Corrupt Activities Act; (6) federal mail and wire fraud; and (7) civil conspiracy.

II...LAW & ARGUMENT

A. Standard of Review

In accordance with Civ. R. 12(B)(6), a defendant may move to dismiss any claim for relief in a plaintiff's complaint, prior to submitting an answer, when the claim for relief fails to state a claim upon which relief can be granted: Dismissal based on a plaintiff's failure to state a claim upon which relief can be granted is appropriate "where it appears beyond doubt that the plaintiff can prove no set of facts in support of its claims." York v. Ohio State Hwy. Patrol (1991), 60 Ohio St.3d, 143, 144; Chanda v. Youseff, 8th Dist. No. 82505, 2004-Ohio-635 117.

B. Each and every cause of action set forth in the Complant is *time*.barred by the applicable statute of limitations.

The statutes of limitations for the causes of action listed in the Complaint are as follows:

...

.[listed]...

The face of Plaintiff's Compliant shows that he has filed each of his claims outside of the applicable statute of limitations. Plaintiff alleges he was "wrongfully" terminated on June 25, 1999. He further alleges that Scheur Defendant, including Defendant Lee, engaged in "fraudulent and corrupt" activities in and before February 2000. Plaintiff filed the Complaint on June 2, 2005, exactly six years and two days after his termination, and more than five and a half years after the date he alleges the Scheur Defendants, including Defendant Lee, engaged in "corrupt and

fraudulent" activities. As such, Plaintiff's causes of action for Employment Discrimination, Wrongful Discharge, Retaliation Against a Whistle Blower, Sexual Harassment, Hostile Work Environment, Violations of the Ohio Corrupt Activities Act, Violations of the Racketeer influenced and Corrupt Organizations Act (RICO), Federal Mail and Wire Fraud, and Civil Conspiracy must be dismissed, as each has been asserted well beyond all applicable statutes of limitation.

III. CONCLUSION

The causes of action set forth in the Complaint are time barred by each applicable statute of limitation. Therefore, Defendant respectfully requests that this Court dismiss the Complaint with prejudice.

Respectfully submitted,
ZARWIN, BAUM, DeVITO, KAPLAN,
SCHAER & TODDY, P.C.

By _____
Rotan E. Lee, Esquire
1515 Market Street, Suite 1200
Philadelphia, PA 19102
(215) 569-2800
(215) 569-1606 (Fascimile)
relee@zarwin.com
Attorney for Defendant,
Rotan E. Lee (Pro Se)

Filed on September 30, 2005 AND THE RELATED ENTRY

09/30/2005	**D 1**	**M O**	**D1 ROTAN LEE MOTION TO DISMISS COMPLAINT FOR FAILURE TO STATE A CLAIM UPON WHICH RELIEF CAN BE GRANTED PRO SE 9999999 05/10/2006 GRANTED AND DENIED IN PART**

APPENDIX H

(Docketed on 10/28/2005)

IN THE COURT OF CPMMON PLEAS

CUYAHOGA COUNTY, OHIO

Prasad Bikkani — Case No 566249

Plaintiff

v. — Judge: David T. Matia

Rotan E Lee, et al

Defendants

With reasonable particularity and clarification, notice of deposition of defendant NEON's board Trustee/Member, Matthew Fitzsimmons

The Defendants will take notice that the Plaintiff, Prasad Bikkani, will take the deposition of Matthew T. Fitzsimmons. Board Trustee Member of NEON (during 1999 and now) on November 11, 2005 at 10 a.m., before a Court Reporter at

Court Reporters of Akron, Canton and Cleveland
Attorney Services of NorthEast Ohio
1404 Terminal Tower, Cleveland, Ohio 44113

Mr. Fitzsimmons deposition was prioritized to minimize future conflicts with the discovery process to the extent feasible. In an effort to clarify issues pertinent to Mr. Fitzsimmons and to show reasonable particularity, the matters on which Mr. Fitzsimmons examination is requested/highlighted some pertinent deposition content below. The deposition is taken pursuant to Rule 30 of the Ohio Rules of Civil Procedure.

Instructions to NEON board Trustee/Member Matthew T. Fitzsimmons:

Depoition content includes the following topics and request to bring the relevant documents that are in your possession. Where you claim any privilege please specify the kind of privilege and if deposition date/time should be changed then inform promptly and feel free to use email Prasadbabu@aol.com at any time of the day.

Correspondence you received including by fax from NEON/THCP/Paula Phelps/Rotan Lee/Scheur Group in 1999 and the information you sent to them in 1999 about Plaintiff, Prasad Bikkani:

- Includes copy of Robert McMillan/Scheur Consultant memo dated April 20, 1999 in an effort to evade $6,500. Training reimbursement upon sending to training and while promising to pay others for the same or similar training
- Includes separation agreement preparation for age over 40 years with withhold of Prasad Bikkani's unused vacation in an effort to get a wrongful discharge and other wrongdoing waivers.
- Includes post termination correspondence while Plaintiff refusing to sign waiver to unlawful acts.

"To the extent NEON board resolutions designating you as spokes person in 1999 to NEON or authorizing you to act on behalf of NEON"

"To the extent, same NEON board who authorized in 1999 to assist consultant Rotan Lee/acting CEO/Scheur Group activities to oust Plaintiff from NEON/THCP authorized you now to express their surprise in your October 10, 2005 communication.

To the extent, current THCP/NEON board members aware of your/NEON 1999 role in ousting Plaintiff.

To the extent THCP/NEON board aware of Plaintiff's communication with NEON/THCP prior to filing lawsuit yet if they expressed surprise to you.

To the extent the current THCP/NEON board members aware of Evelyn Armstrong's affidavit that you submitted to court on or around September 6, 2005.

To the extent, you acted a alter ego of NEON and THCP in 1999 To the extent, you are acting as alter ego of NEON/THCP now in year 2005

To the extent, your communication through acting CEO of THCP/Rotan Lee/Scheur Group Consultant, around May 1999, to THCP's board with your objections to NEON's officer becoming THCP's CEO.

To the extent **you did not** communicate in 1999 to NEON's board about your support to THCP's acting CEO/Rotan Lee/Scheur Group Consultant to become a regular THCP's CEO compared to NEON's wishes of its officer becoming THCP's CEO.

To the extent, your endorsement of using non-profit corporation Federal funds towards political purposes through Beptin Associates Arnold Pinkney in 1999.

To the extent your endorsement of adding Beptin Associate's owner, Arnold Pinkney into THCP Trustee to control THCP board.

To the extent to your knowledge as NEON board member, about hiring and supervision of NEON employees by Plaintiff.

The Payments you received from THCP/Rotan Lee/Scheur Group in 1999 in one form or the other following ouster of Plaintiff, after Rotan Lee/Scheur Group getting lump sum payments.

To the extent, you were alleged/proven by your opponent attorney(s) about you submitting false affidavits and

filing frivolous motions in the cases especially involving THCP/NEON, and the pattern.

Respectfully submitted,

Prasad Bikkani, Pro Se
3043 Forest Lake Dr
Westlake, OH 44145
Prasadbabu@aol.com, (440) 864-6366

Certificate of Service

A copy of the foregoing was sent by regular US Mail on ths 28th day of October 2005 to the following addresses.

Prasad Bikkani Pro Se
Plaintiff

;;;;...**Addresses of Defendants...**

Filed/Docketed October 28, 2005, as inserted the entry below:

10/28/2005	P 1	O T	P1 PRASAD BIKKANI WITH REASONABLE PARTICULARTIY AND CALRIFICATION , NOTICE OF DEPOSITION OF DEFT. NEON'S BORAD TRUSTEE/ MEMOBER, MATTHEW GT. FITSZIMMONS. PRO SE 9999999

(Docketed on 11/22/2005)
IN THE COURT OF CPMMON PLEAS
CUYAHOGA COUNTY, OHIO

PRASAD BIKKANI,
Plaintiff
Vs.

CASE No. CV05566249

JUDGE DAVID T. MATIA

ROTAN G. LEE, EQ, et al
Defendant.

MOTION TO WITHDRAW AS COUNSEL

Now comes Dennis A. Roth, Mary Louisa L 'Hommedicu, J. Ryan Williams, Hayley L. Butera and the firm of Roth Bierman LLP, consel to defendants Barry S. Scheur, Esq., Scheur & Associates, Inc. and Roth M. Aaron (collectively, the "Scheur Defendants"), and hereby request from this Honorable Court leave to withdraw as counsel for Scheur Defendants in the above-captioned case. This withdraw is requested due to a conflict of interest between Scheur Defendants and by agreement of Scheur Defendants. Scheur Defendants have been notified of the intent to withdraw by certified mail, return receipt requested, as required by Local Rule 10(B).

Scheur Defendants are in the process of retaining new counsel with respect to this litigation. For the foregoing reasons, Mary Louisa L. 'Hommedieu, J. Ryan Williams, Hayley L. Butera and the firm of Roth Bierman LLP, request leave to withdraw as Counsel for Scheur Defendants. A proposed order is attached.

Respectfully submitted,
ROTH BIERMANN LLP

Mary Louisa L. Hammedieu (#0066808)
J. Ryan William (#0076696)
Hayley L. Butera (#0078659)
5196 Richmond Road
Bedford Heights, OH 44146
216.595.0071
216.595.0073 FAX
Attorneys for Defendants Barry S. Scheur, Esq, Scheur &. Associates, Inc. and Ruth M. Aaaron

Filed/Docketed October 28, 2005, as inserted the entry below:

11/22/2005	D	MO	DEFENDANT(S) BARRY S SCHEUR(D2), SCHEUR & ASSOCIATES INC DEFENDAN T(D3) and RUTH M AARON(D5) MOTION TO WITHDRAW AS COUNSEL HAYLEY BUTERA 0078659 03/20/2006 - GRANTED

NICOLA, GUDBRANSON & COOPER, LLC
ATTORNEYS AND COUNSELLORS

[Letter head with several names on it]

October 10, 2005

Mr. Prasad Bikkani
3043 Forestlake Drive
Westlake, OH 44145

Re: Prasad Bikkani v. Rotan E. Lee, Esaq, et al
Cuyahoga County Court of Common Pleas
Case No. CV-05-566249

Dear Mr. Bikkani:

As you know, I represent NorthEast Ohio Neighborhood Health Services, Inc. ("NEON") and Total Health Care Plan, Inc. ("THCP"), both of whom you have named as defendants in your Pro se Complaint.

I – and they – were shocked by your effort to join them as defendants. I have reviewed the Complaint carefully, and am at a loss to understand what the basis of your claim against them is – or could be. You were not employed by NEON in 1999. Thus, you do not have, as a matter of law, a wrongful discharge/employment discrimination claim against NEON. NEON is completely unrelated to your problems with the Scheur Management Group, Rotan Lee, and to your problems with the Scheur Management Group, Rotan Lee, and others. If, as it appears, your claim is that the Scheur Management group, Rotan Lee, and others harmed THCP, it is far from clear why you chose to name THCP and NEON as defendants and drag them into this mess. In your efforts to get back at the Scheur Management Group people, Rotan Lee and others you are needlessly hurting NEON and THCP by forcing them to incur attorneys' fees, costs, and expenses that they should not have to bear. The Complaint fails to identify with particularity

what, exactly, you allege my clients did that was wrong. Many of the purported claims against my clients are time-barred.

The Complaint fails to allege any facts upon which NEON or THCP could possibly be liable to you. I write to you now to ask you to dismiss them from this case before we have to go through discovery and full bore litigation. These allegations against NEON and THCP lack any factual and legal merit. NEON and THCP will defend them vigorously.

My clients have authorized me to advise you that, if they have to litigate this case and prevail – as they expect that they will – they will seek to recover all of their attorneys' fees, costs, and expenses incurred in this case against you, pursuant to Ohio R. Civ. P. 11, R.C. 2323.51, Ohio's frivolous conduct statute, and other applicable laws and rules. Just so that there is no misunderstanding, I wanted to give you one last chance to do the right thing and voluntarily dismiss my clients from this lawsuit.

The fact that you had problems with the Scheur Management Group people, Rotan Lee, and others is not the fault of my clients and cannot, as a matter of law, be laid at my clients' doorstep. The fact that you had problems with these outside consultants is no jurisdiction for casting your net wider to seek compensation from persons who, like my clients, are wholly unrelated to your predicament. The claims you assert against NEON and THCP are uncomfortably baseless and frivolous.

Please notify me promptly whether you will voluntarily dismiss NEON and THCP from this case. If you would like to discuss this matter further, please give me call.

Very truly yours,

Matthew T. Fitzsimmons

MTF/rgg

APPENDIX K

Filed April 23, 2007

IN THE COURT OF COMMON PLEAS

CUYAHOGA COUNTY, OHIO

WM SPECIALTY MORTGAGE LLC CASE NO. CV07-620252

PLAINTIFF, JUDGE BRIAN J, CORRIGAN

V.

VIJAYA BIKKANI ET AL **ANSWER OF DEFENDANTS NORTHEAST OHIO NEIGHBORHOOD HEALTH SERVICES, INC. AND TOTAL HEALTH CARE PLAN, INC.**

_____Northeast Ohio Neighborhood Health Services, Inc, ("NEON") and Total Health Care Plan, Inc, ("THCP"), for their Answer to the Complaint, state as follows:

FIRST DEFENSE

1-6. Deny, for lack of knowledge or information sufficient to form a belief, the allegations of paragraph 1 through 6.

7. Admit that they had a Certificate of Judgment Lien JL-06-280929 which has been satisfied and released, and otherwise deny the remaining allegations of paragraph . See attached Exhibit A.

8. With regard to the allegations of paragraph 8 of the Complaint, incorporate, as if fully rewritten herein, the admissions, denials, and averments set forth above in paragraphs 1 through 7.

9-1-. Deny, for lack of knowledge or information sufficient to form a belief, the allegations of paragraph 9 and 10.

11. With regard to the allegations of paragraph 11 of the Complaint, incorporate, as if fully rewritten herein, the admissions, denials, and averments set forth above in paragraphs 1 through 10.

12-13. Deny, for lack of knowledge or information sufficient to form a belief, the allegations of paragraph 12 and 13 of the Complaint.

14. Deny each and every remaining allegations of the Complaint not heretofore specifically admitted to be true.

SECOND DEFENSE

15. The Complaint falls to state a claim against NEON and THCP upon which relief can be granted.

THIRD DEFENSE

16. The Certificate of Judgment Lien in favor of NEON and THCP (JL-06-280929) has been satisfied and released has also been satisfied and released. See attached Exhibit A.

FOURTH DEFENSE

17. NEON and THCP reserve the right to amend and supplement their Answer as discovery progresses, up to and including the trial of this action.

WHEREFORE, having fully answered the Complaint, NEON and THCP pray that this Court enter judgment in their favor, and award them their costs, disbursements, expenses, and attorneys' fees incurred in this action, and that the Court award them such other and further relief as the Court deems just, appropriate, and equitable under the circumstances.

Respectfully submitted,
NICOLA, GUDBRANSON & COOPER, LLC

Matthew T. Fitzsimmons (0013404)
R. Christopher Yingling (00665511)
Landmark office Towers
Republic Building, Suite 1400
25 West Prospect Avenue
Cleveland, Ohio 44115
Phone: (216) 621-7227, Fax: (216) 621-3999

Attorneys for Defendants
NorthEast Ohio Neighborhood Health
Services, Inc. and Total Health Care Plan, Inc.

 APPENDIX L

Filed on April 19, 2007

IN THE COURT OF APPEALS OF OHO
EIGHTH APPELLATE DISTRICT
CUYAHOGA COUNTY

PRASAD BIKKANI **CASE No 06 088650**
Plaintiff-Appellant,

v.

ROTAN E. LEE, ESQ, et al.
Defendants-Appellees

RELEASE OF LIEN AND SATISFACTION OF JUDGMENT

The Court is hereby notified that the Judgment entered on October 30, 2006 against Prasad Bikkani and in favor of NorthEast Ohio Neighborhood Health Services and that the judgment recorded at Journal 623, page 81, and related Certificate of Judgment Lien JL-96-280929, now satisfied, may accordingly be removed.

Respectfully submitted,
NICOLA, GUDBRANSON & COOPER, LLC

Matthew T. Fitzsimmons (0013404)
R. Christopher Yingling (00665511)
Landmark office Towers
Republic Building, Suite 1400
25 West Prospect Avenue
Cleveland, Ohio 44115
Phone: (216) 621-7227, Fax: (216) 621-3999
Attorneys for Defendants-Appellees
NorthEast Ohio Neighborhood Health Services, Inc. and Total Health Care Plan, Inc.

EXHIBIT A for Appendix K

APPENDIX M

NICOLA, GUDBRANSON & COOPER, LLC

ATTORNEYS AND COUNSELLORS

[Letter head with several names]

Ms. Mary Jo Lopez **May 22, 2001**

Chief Deputy Rehabilitator, Total Health Care Plan, Inc.

c/o Carlile, Patchen & Murphy LLP

366 East Broad Street, Columbus, Ohio 43215

Dear Mary Jo:

As you recently requested, I am enclosing our statements for legal services rendered to THCP from 1998 through the present (attached at Tab A); our audit response letters for that time period (attached at Tab B); and our litigation updates (attached at Tab C).

The detail of the legal services we performed is contained in all of these documents. As a general proposition, our work for THCP was primarily defending commercial/business claims, handling state and federal discrimination/wrongful discharge cases, defending THCP in a wide variety of general civil matters, and general employment and human resources counseling. The resolution of all these matters is set forth in detail in the audit response letters (attached at Tab B).

Sometime around mid-March of 1999, Rotan E. Lee of the Shure Management Group proposed that our firm forego hourly billing and switch to a monthly retainer of $5,000 to represent.

THC'P in all wrongful discharge/discrimination/ human resources matters. We agreed to do so. The Shure Management Group's rationale for this arrangement was to stabilize THCP's expenses, and make them fixed and predictable, as opposed to the roller coaster nature of bills from law firms which go up and down depending on activity. We were to handle all general employment and human resources matters for THCP on this flat-fee basis, without submitting hourly detailed time charges for such activities.

There was obviously a risk and a benefit for both our firm as well as THCP with this arrangement.

From March 3, 1999 through the early part of 2000, I provided substantial legal advice to Rotan E. Lee, other members of Shure Management Group, Paula Phelps, Gloria Stewart, and others involved with THCP's human resources function relating to employee discharge and discipline matters. I was intimately involved in providing legal advice for the design and implementation of Project Slimfast (the reduction-in-force Mr. Lee decided to implement), and, at the request. of Mr. Lee, attended strategy sessions for various personnel matters, identified personnel or -force, drafted various separation agreements for employees above and below the age of forty, and employees in both union and nonunion positions.

When it became apparent that THCP was using, or going to use, another law firm to do this work, I wrote to Martha Muhammad, then THCP's Chief Financial Officer, and volunteered to give THCP the option to terminate this arrangement. See Tab D. At the time I made that suggestion, I had not been asked by anyone to terminate the arrangement of the $5,000 monthly retainer. THCP agreed that it made sense to then terminate that arrangement, and I then stopped doing the employment and human resource counseling work for THCP and stopped receiving the $5,000 monthly payments. There were additional matters which THCP was kind enough to refer to me, principally the Akron Children's Hospital lawsuit, which I defended until ODI took over as Rehabilitator.

I hope this answers any questions you and your colleagues may have. Please give me a call if you need. any further information.

Sincerely,

Mathew T. **Fitzsimmons**

MTF:rph Enclosures
F:\NP\M7f\thcp\L-LOpez 5.16.01.doc

APPENDIX N

March 22, 2005

Prasad Bikkani
3043 Forestlake Drive
Westlake, OH 44145

Dear Mr. Bikkani:

I have left voice messages at both of the telephone numbers you included in your letter dated December 27, 2004 to the CEO of NEON. Since I have not received a response to my messages I thought in best to try US mail in hopes that it will get your attention. It is my hope that we will be able to meet and discuss the content of your letter so that I might understand from your perspective the rationale for this communication. It was my understanding and belief that all matters pertaining to THCP were resolved prior to the court decision to dissolve the plan.
Please contact me at your convenience.
Sincerely,

Willie F. Austin
President and CEO

(Filed 9/6/2005 with motions by Matthew Fitzsimmons)

IN THE COURT OF COMMON PLEAS
CUYAHOGA COUNTY, OHIO

PRASAD BIKKANI — CASE NO. CV-05-566299
Plaintiff, — JUDGE DAVID T. MATIA
v.
ROTAN E. LEE, ESQ., et al. — AFFIDAVIT OF EVELYN ARMSTRONG
Defendants

STATE OF OHIO
SS.
COUNTY OF CUYAHOGA

Evelyn Armstrong, being first duly sworn, states as follows:

1. I am the Acting Director of Human Resources of NorthEast Ohio Neighborhood Health Services, Inc. ("NEON").
2. Unless otherwise indicated, the information contained herein is based upon my personal knowledge, and/or upon my review of records maintained by NEON in the ordinary course of business.
3. I have reviewed NEON's personnel records and files. NEON has no records or files reflecting or demonstrating that Prasad Bikkani was ever an employee of, or employee by, NEON from 1995 to the present. Mr. Bikkani was not an employee of NEON's in June and July 1999 - - the point in time that he alleges he was wrongfully terminated from employment at Total Health Care Plan, Inc.

FURTHER AFFANT SAYETH NAUGHT

_____
(Evelyn Armstrong)

SWORN TO BEFORE ME and subscribed in my presence this 23rd day of September, 2005.

NOTARY PUBLIC

28a APPENDIX P

Cleveland Neighborhood Health Services, Inc
12800 Shaker Boulevard Cleveland, Ohio 44120
(216) 991 :3000 FAX 991-3011
Dunun Neuhauser, Ph.D.. Chairperson
James G. Turner Chief Executive Officer
Don Slocumm, 1st Vice Chairperson
M. T. Miller, DDS,, 2nd Vice Chairperson
Ethel Green, Treasurer

September 27, 1994

Mr. Prasad Bikkani
596 Miner Rd.
Highland Hts, Ohio 44143

Dear Mr. Bikkani:

We are very pleased to offer you the programmer/Analyst position with Cleveland Neighborhood Health Services, inc. at the Shaker Blvd location beginning tentatively October 10, 1994.

This offer is subject to successful completion of the 6-month introductory (probationary) period. The hours are 8:30 a.m. to 5:30 p. m., Monday through Friday. The annual salary for this position is $ [redacted]. The benefits package will be presented to you in detail at orientation, which will be held following your pre employment physical. The physical will be as follows:

Monday, October 10, 1994
9:30 a.m.
Hough Health Center
8300 Hough Avenue
Cleveland, Ohio 44103
Report to the Administrative Area
Ms. Yolanda Moorer

Orientation will be held following the physical at:

13214 Shaker Blvd, 2nd floor
Cleveland, Ohio 44121

If this is acceptable to you, please write a brief acceptance letter. You have any questions, do not hesitate to contact me. Thank you, again for your interest in Cleveland Neighborhood Health Services, Inc. We look forward to your joining our "family"

Sincerely,

Robert James
Director of Human Services

A program of Cleveland Neighborhood Health Services, Inc in affiliation with the department of Health and Human Services Accredited by the joint commission on accreditation of health care organizations

APPENDIX Q

Court of Appeals Of Ohio

EIGHTH APPELLATE DISTRICT

COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION

No. 89312

PRASAD BIKKANI

PLAINTIFF-APPELLEE

vs.

ROTAN E. LEE, ET AL.

DEFENDANTS-APPELLANTS

JUDGMENT:

REVERSED AND REMANDED

Civil Appeal from the

Cuyahoga County Court of Common Pleas

Case No. CV-566249

BEFORE: Boyle, J., Sweeney, A.J., and McMonagle, J.

RELEASED: June 26, 2008

JOURNALIZED: JUL 7 - 2008

ATTORNEYS FOR APPELLANTS

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BOYLE, M.J., J.:

Defendants-appellants, NorthEast Ohio Neighborhood Health Services, Inc. ("NEON") and Total Health Care Plan, Inc. ("THCP"), appeal the trial court's decision

denying their motion for sanctions against plaintiff-appellee, Prasad Bikkani. Finding merit to the appeal, we reverse and remand the case for a hearing.

Factual and Procedural History

Bikkani, a former employee of THCP, initiated the underlying case on June 27, 2005, approximately six years after his job termination, by filing pro se a 30-page, 107-paragraph complaint against 15 defendants, including NEON and THCP, purporting to allege claims for (1) fraud, (2) Ohio RICO violations, (3) race, sex, national origin, and age discrimination under Ohio and federal law, (4) wrongful termination, (5) loss of consortium, and (6) a shareholder's derivative action. NEON and THCP immediately responded to Bikkani's complaint by sending a letter and asking him to withdraw his claims because they were frivolous. The letter provided in pertinent part as follows:

"* * * I have reviewed the Complaint carefully, and am at a loss to understand what the basis of your claim against [NEON and THCP] *** could be. You were not employed by NEON in 1999. Thus, you do not have, as a matter of law, a wrongful discharge/employment discrimination claim against NEON. * * * The Complaint fails to identify with particularity what, exactly, you allege my clients did that was wrong. Many of the purported claims against my clients are time-barred.

"The Complaint fails to allege any facts upon which NEON or THCP could possibly be liable to you. I write to you now to ask you to dismiss them from the case before we have to go through discovery and full-bore litigation. These allegations against NEON and THCP lack any factual and legal merit. The claims against them are baseless and frivolous. NEON and THCP will defend them vigorously.

"My clients have authorized me to advise you that, if they have to litigate this case and prevail -as they expect that they will- they will seek to recover all of their attorneys' fees, costs, and expenses incurred in this case against you, pursuant to Ohio R. Civ. P. 11, R.C. 2323.51, Ohio's frivolous conduct statute, and other applicable laws and rules. ***"

Bikkani did not withdraw his claims. Consequently, NEON and THCP moved to dismiss the claims and, in the alternative, moved for a more definite statement. Bikkani opposed the motions with a series of incomprehensible briefs. He further attempted to remove NEON's and THCP's counsel, Matthew T. Fitzsimmons, III, by filing on September 12, 2005, the first of four motions to disqualify attorney Fitzsimmons. In his motion, he argued that Fitzsimmons had a conflict of interest because he was a material witness in the case based on his prior representation of NEON and THCP. He further alleged that Fitzsimmons engaged in a series of ethical violations requiring his removal from the case. Prior to any ruling by the trial court on Bikanni's purported motion to disqualify attorney Fitzsimmons, he filed a second motion to disqualify and a motion to "disbar" a couple of months later, accusing Fitzsimmons of numerous wrongdoings, including falsifying pleadings and engaging in fraud.

On May 10, 2006, the trial court dismissed all claims except the state-law employment claims. In dismissing the other claims, the court specifically recognized that Bikkani's purported RICO and federal employment-related claims were time-barred. It further recognized that Bikkani failed to plead his fraud and RICO claims with particularity. Finally, the court dismissed Bikkani's purported shareholder derivative action because Bikkani, who was not a shareholder, lacked standing. The court also dismissed Bikkani's

purported motions to disqualify/disbar attorney Fitzsimmons.

Shortly thereafter, NEON and THCP moved for sanctions under R.C.2323.51 and Civ.R. 11, seeking to recover the attorney fees, costs, and expenses incurred by them successfully defending the dismissed claims and the motions to disqualify attorney Fitzsimmons. In support of their motion, they attached an expert report, verifying the reasonableness of their fees. Bikkani never opposed the motion. Instead, Bikkani filed an amended complaint, without leave of court, purporting to name attorney Fitzsimmons as a new party defendant, which the trial court ultimately struck.

Thereafter, NEON and THCP attempted to obtain discovery from Bikkani to defend against the remaining state-law discrimination claims. But Bikkani failed to respond to the discovery requests. In June 2006, NEON and THCP moved the trial court to compel Bikkani to comply with the discovery requests. While the motion was pending, Bikkani filed his third motion to disqualify attorney Fitzsimmons, along with a request that the trial court "disbar" him.

On July 11, 2006, the trial court ordered Bikkani to provide the discovery responses, including signed authorizations to release medical records, and notified him that his failure to comply could result in sanctions. After the court imposed deadline for the discovery responses passed, NEON and THCP moved to dismiss the complaint due to Bikkani's failure to comply.

On July 25, 2006, the trial court denied Bikanni's third motion to disqualify attorney Fitzsimmons and his request to have him disbarred, which Bikkani unsuccessfully appealed[1]. ([1]On August 24, 2006, Bikanni, pro se, filed a notice of appeal, challenging the trial court's denial of his third motion to disqualify/disbar

attorney Fitzsimmons. This court dismissed the appeal sua sponte for lack of a final appealable order. See *Bihanni v. Lee*, 8th Dist. No. 88650, Judgment Entry dated Sept. 26, 2006. Bikanni subsequently moved this court to reconsider, which we denied. Notably, this court awarded NEON and THCP sanctions and ordered Bikanni to cover, in part, their attorney fees incurred in defending the frivolous appeal. Id., Judgment Entry dated Oct. 10, 2006. Bikanni appealed this court's order to the Ohio Supreme Court, which dismissed his appeal, awarded sanctions, and ultimately declared Bikanni to be a vexatious litigator. See *Bikani v.* Lee, Ohio Supreme Court Case No. 2006-2073, Judgment Entry dated Feb. 28, 2007.)

Shortly thereafter, NEON and THCP moved to dismiss the complaint again after Bikkani failed to appear a second time for his noticed deposition.

On August 17,2006, the trial court denied the motions to dismiss and gave Bikanni a second opportunity to comply with the discovery requests. But because Bikanni ignored the court's earlier order to provide executed medical-records authorizations, the court barred Bikanni from presenting any evidence at trial of medical and psychological damages. The trial court further warned that Bikanni's failure to respond to the discovery requests (after having already been granted numerous extensions) could result in dismissal of the case.

Bikanni ignored the August 17 order and failed to provide responses to NEON's and THCP's discovery requests. Consequently, NEON and THCP moved to dismiss the case for the fourth time. Bikanni subsequently filed his fourth motion in the trial court to disqualify attorney Fitzsimmons and again asked that Fitzsimmons be disbarred. On October 3, 2006, the trial court dismissed Bikanni's complaint as to all defendants

and denied his fourth motion to disqualify/disbar attorney Fitzsimmons.

Within thirty days of the final judgment, NEON and THCP filed a supplemental motion for sanctions, seeking to recover the attorneys' fees, costs, and expenses incurred in defending Bikanni's frivolous claims, motions, and arguments. The trial court, without holding a hearing, denied the motion. From that order, NEON and THCP appeal, raising the following assignment of error:

"[1] The trial court erred as a matter of law and to the substantial prejudice of defendants-appellants NorthEast Ohio Neighborhood Health Services, Inc. and Total Health Care Plan, Inc. by denying their Motion for Sanctions and Supplemental Motion for Sanctions, pursuant to R.C. 2323.51 and Ohio R. Civ. P. 11."

Civ.R. 11 and R. C. 2323.51

NEON and THCP argue in their sole assignment of error that the trial court erred in denying their motions for sanctions under R.C. 2323.51, Ohio's frivolous conduct statute, and Civ.R. 11. They argue that Bikanni engaged in frivolous conduct and willful violations of Civ.R. 11 throughout the litigation, forcing them to unnecessarily incur attorney fees and other related expenses, and thereby warranting the granting of their motions.

Ohio law provides two separate mechanisms for an aggrieved party to recover attorney fees for frivolous conduct: R.C. 2323.51 and Civ. R. 11. *Sigmon v. Southwest Gen. Health Ctr.*, 8th Dist. No. 88276, 2007-Ohio-2117, ¶ 14.

Although both authorize the award of attorney fees as a sanction for frivolous conduct, they have separate standards of proof and differ in application. Id.

Civ.R. 11 governs the signing of pleadings, motions, and other documents and provides in pertinent part that:

"The signature of an attorney or pro se party constitutes a certificate by the attorney or party that the attorney or party has read the document; that to the best of the attorney's or party's

knowledge, information, and belief there is good ground to support it; and that it is not interposed for delay. If a document is not signed or is signed with intent to defeat the purpose of this rule, it may be stricken as sham and false and the action may proceed as though the document had not been served. For a willful violation of this rule, an attorney or pro se party, upon motion of a party or upon the court's own motion, may be subjected to appropriate action, including an award to the opposing party of expenses and reasonable attorney fees incurred in bringing any motion under this rule. Similar action may be taken if scandalous or indecent matter is inserted."

In determining whether a pro se party's conduct violates Civ.R. 11, the trial court should consider whether the party signing the document: 1) has read the document, □2) harbors good grounds to support the document to the best of the person's knowledge, information, and belief, and (3) did not file the document for purposes of delay. *Mitchell v. Western Reserve Area Agency on Aging*, 8th Dist. Nos. 83837 and 83877, 2004-Ohio-4353, ¶ 18. If the pro se party fails to meet one of these requirements and the failure was willful, as opposed to merely negligent, the person may be subject to sanctions, including an award of reasonable attorney fees and expenses incurred by the opposing party bringing any motion under Civ.R. 11. Id. In deciding whether a violation was willful, the trial court must apply a subjective bad faith standard. *Riston v. Butler*, Ohio App.3d 390, 2002-Ohio-2308, ¶ 12.

R.C. 2323.51, conversely, applies an objective standard in determining frivolous conduct, as opposed to a subjective one. *State Farm Ins. Co. v. Peda*, 11th Dist. No. 2004-L-082, 2005-Ohio-3405. The finding of frivolous conduct under R. C. 2323.51 is determined without reference to what the individual knew or believed. *Ceol v. Zion Indus., Inc.* (1992), 81 Ohio App.3d 286, 289.

"Frivolous conduct" is defined under the statute as conduct that satisfies any of the following:

"(i) It obviously serves merely to harass or maliciously injure another party to the civil action or appeal or is for another improper purpose, including, but not limited to, causing unnecessary delay or a needless increase in the cost of litigation.

"(ii) It is not warranted under existing law, cannot be supported by a good faith argument for an extension, modification, or reversal of existing law, or cannot be supported by a good faith argument for the establishment of new law.

"(iii) The conduct consists of allegations or other factual contentions that have no evidentiary support or, if specifically so identified, are not likely to have evidentiary support after a reasonable opportunity for further investigation or discovery.

"(iv) The conduct consists of denials or factual contentions that are not warranted by the evidence or, if specifically so identified, are not reasonably based on a lack of information or belief." R.C. 2323.51(A)(2)(a)(i)-(iv).

A trial court's finding of frivolous conduct alone, however, is insufficient to support an award of attorney fees under the statute. The trial court must also determine whether the frivolous conduct adversely affected the party moving for attorney fees. *Stohlmann v. Hall*, 158 Ohio App.3d 499, 2004-Ohio-5219, ¶8. "Where a determination has been made that * * * a certain claim or claims, or a defense or defenses asserted in a civil action were frivolous, the party seeking R.C. 2323.51 attorney's fees must affirmatively demonstrate that he or she incurred additional attorney's fees as a direct, identifiable result of defending the frivolous conduct in particular." Id., quoting *Witlberger v. Davis* (1996), 110 Ohio App.3d 46, 54.

Notably, both R.C. 2323.51 and Civ.R. 11 allow for the imposition of sanctions against a pro se litigant. See *Burrell v. Kassicieh* (1998), 128 Ohio App.3d 226. Under Ohio law, pro se litigants are held to the same standard as all other litigants: they must comply with the rules of procedure and must accept the consequences of their own mistakes. *Kilroy v. B.H. Lakeshore Co.* (1996), 111 Ohio App.3d 357, 363. The mere fact that a party is pro se does not shield the party from the imposition of sanctions when the party engages in frivolous conduct. *Burrell,* supra. Indeed, a court's refusal to hold a pro se litigaint to the same standard as an attorney who engages in frivolous and egregious conduct would only defeat the purpose of R.C. 2323.51 and Civ.R. 11: to deter vexatious and harassing litigation. See, generally, *Shaffer v. Mease* (1991), 66 Ohio App.3d 400, 406. And although R.C. 2323.51, which is broader in scope than Civ.R. 11, should be applied carefully so that legitimate claims are not chilled, and parties are not punished for mere misjudgment or tactical error, trial courts nevertheless "must have the courage to further the goals of the statute" and impose sanctions whenever appropriate. *Ceol,* supra at 292 (internal quotations omitted); see, also, *Beaver Excavating Co. v. Perry Twp.* (1992), 79 Ohio App.3d □□□□□*Turowski v. Johnson* (1991), 70 Ohio App.3d 118. The decision to grant sanctions under R.C. 2323.51 and Civ.R. 11 rests with the sound discretion of the trial court. *Taylor v. Franklin Blvd. Nursing Home, Inc.* (1996), 112 Ohio App.3d 27. A reviewing court will not reverse a trial court's decision to deny or grant sanctions absent an abuse of discretion. Id.; *Jurick v. Jackim*, 8th Dist. No. 89997, 2008-Ohio-2346.

Although ordinarily a trial court does not have to hold a hearing if it denies a motion for attorney fees and costs under R.C. 2323.51 or Civ.R. 11, Ohio courts have recognized that a trial court abuses its discretion when it

"arbitrarily" denies a request for attorney fees. *Turowski v. Johnson* Ohio App.3d *704; Mitchell v. Western Reserve Area Agency on Aging,* 8th Dist.Nos. 83837 and 83877, 2004-Ohio-4353, ¶27. Compare *Pisani v. Pisani* (1995), 101 Ohio App.3d 83 (recognizing that a hearing is not required when the court determines, upon consideration of the motion and in its discretion, that the motion lacks merit). An arbitrary denial occurs when (1) the record clearly evidences frivolous conduct and (2) the trial court nonetheless denies a motion for attorney fees without holding a hearing. Id. Similarly, if an arguable basis exists for an award of sanctions under Civ.R. 11, a trial court must hold a hearing on the motion. *Fitworks Holdings, L.L.C. v. Pitchford-El,* 8th Dist. No. 88364, 2007-Ohio-2517, 114, citing *Capps v. Milhem,* 2nd Dist. No. 03AP-251, 2003-Ohio-5212.

Here, the trial court never held a hearing on NEON's and THCP's requests for attorney fees and costs under R.C. 2323.51 and Civ.R. 11, despite the overwhelming evidence of egregious conduct throughout the litigation. The record clearly evidences frivolous conduct as well as an arguable basis to impose sanctions under Civ.R. 11.

In their motions, NEON and THCP presented ample evidence of Bikanni's refusal to dismiss claims that he knew or should have known were time-barred. Indeed, NEON and THCP notified Bikanni by letter immediately after the filing of his complaint. And even after NEON and THCP filed their motions to dismiss, Bikanni refused to dismiss the time-barred claims. Bikanni also should have known that he lacked standing, as recognized by the trial court, to bring a shareholder derivative action when he was never a shareholder.

The record further reveals that Bikanni filed four motions to disqualify appellees' counsel, three of which also sought to disbar attorney Fitzsimmons. Apart from the fact that the trial court has no jurisdiction to disbar appellees' counsel and that Bikanni failed to provide any credible evidence or sound legal argument in support of his motions to disqualify, Bikanni filed the same motion four separate times. Notably, Bikanni's motions became more inflammatory and outrageous as the litigation progressed, accusing Fitzsimmons of a myriad of wrongdoings, including criminal conduct, fraud, and deceit. And, astonishingly, Bikanni appealed the denial of his third motion to disbar/disqualify to this court and, after his appeal was dismissed, he further sought review by the Ohio Supreme Court. Consequently, both this court and the Ohio Supreme Court awarded attorney fees to NEON and THCP for having to defend the frivolous appeals. And the Ohio Supreme Court subsequently deemed Bikanni a vexatious litigator.

Our review of the record further reveals that Bikanni blatantly disregarded the civil rules of procedure throughout the litigation, especially as they relate to discovery. Bikanni failed to provide any discovery responses despite court orders to do so. He twice failed to appear for his deposition despite being duly notified. He improperly sought to obtain privileged communications from the law firm representing NEON and THCP and improperly served subpoenas throughout the litigation. Further, upon unsuccessfully moving to disqualify attorney Fitzsimmons, Bikanni filed, without leave, an amended complaint, naming Fitzsimmons as a defendant. Bikanni's conduct not only delayed the proceedings but it forced NEON and THCP to incur additional expenses by having to respond to such misconduct.

Accordingly, we sustain the sole assignment in part, finding that the trial court abused its discretion in

denying NEON and THCP's motions for sanctions without holding a hearing. To the extent that NEON and THCP seek a determination as to each and every act that entitles them to attorney fees under R.C. 2323.51 and Civ.R.11,we decline to reach this issue without the trial court first holding an evidentiary hearing. We further express no opinion as to whether the attorney fees sought are necessary or reasonable, a matter left to the sound discretion of the trial court.

Judgment reversed and case remanded for an evidentiary hearing and the trial court's reconsideration of an award of attorney fees.

It is ordered that appellants recover from appellee costs herein taxed.

The court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate be sent to said court to carry this judgment into execution.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

MARY J. BOYLE, JUDGE
JAMES J. SWEENEY, A.J., and
CHRISTINE T. MCMONAGLE, J., CONCUR

Note: In the judgment at times Bikkani was spelled as Bikanni and maintained same in reproducing the entry.

APPENDIX R

Court of Appeals Of Ohio

EIGHTH APPELLATE DISTRICT

COUNTY OF CUYAHOGA

DOCKET ENTRY

CA No. 06-088650

PRASAD BIKKANI

PLAINTIFF-APPELLANT

vs.

ROTAN E. LEE, ET AL.

DEFENDANTS-APPELLEES

Civil Appeal from the

Cuyahoga County Court of Common Pleas

Case No. CV-566249

Case Number: **CA-06-088650**

Case Title: PRASAD BIKKANI vs. ROTAN LEE, ET AL.

Date	Side	Type	Description
04/17/2007	N/A	MO	APPELLEES NORTHEAST OHIO NEIGHBORHOOD HEALTH SERVICES, INC. AND TOTAL HEALTH CARE PLAN, INC.'S NOTICE OF SATISFACTION OF JUDGMENT AND RELEASE OF LIEN
04/12/2007	N/A	JE	SUPREME COURT OF OHIO SUPREME COURT NO. 06-2302. UPON CONSIDERATION OF THE JURISDICTIONAL MEMORANDA FILED IN THIS CASE, THE COURT DECLINES JURISD. TO HEAR THE CASE & DISMISSES THE APPEAL AS NOT INVOLVING ANY SUBSTANTIAL CONSTITUTIONAL QUESTION. UPON CONSIDERATION OF THE MOTION TO REMOVE MATTHEW T. FITZSIMMONS, ESQ., AS A

		PERSONALLY NAMED DEFENDANT-APPELLEE, IT IS ORDERED BY THE COURT THAT THE MOTION B E GRANTED. VOL. 633 PG. 510. NOTICE ISSUED.
03/16/ 2007	N/A	JE SUPREME COURT OF OHIO SUPREME COURT NO. 06-2073. UPON CONSIDERATION OF THE JURISDICTIONAL MEMORANDA FILED IN THIS CASE, THE COURT DECLINES JURISD. TO HEAR THE CASE & DISMISSES THE APPEAL AS NOT INVOLVING ANY SUBSTANTIAL CONSTITUTIONAL QUEST. UPON CONSIDERATION OF THE MOTION OF MATTHEW T. FITZSIMMONS, ESQ., TO REMOVE HIMSELF AS A PERSONALLY NAMED DEFENDANT-APPELLEE, THE MOTION OF NORTHEAST OHIO NEIGHBORHOOD HEALTH SERVICES, INC., ET AL., TO STRIKE MEMO OPPOSING THE MOTION TO REMOVE MATTHEW FITZSIMMMONS AS A PERSONALLY NAMED DEFENDANT-APPELLEE, AND APPELLEES' MOTIONS TO HAVE PRO-SE APPELLANT CLASSIFIED AS A VEXATIOUS LITIGATOR AND FOR SANCTIONS FOR FRIVOLOUS ACTION, IT IS ORDERED BY THE COURT THAT THE MOTION TO REMOVE MATTHEW T. FITZSIMMONS AS A PERSONALLY NAMED DEFENDANT-APPELLEE AND THE MOTION OF NORTHEAST

			OHIO NEIGHBORHOOD HEALTH SERVICES, INC., ET AL., TO STRIKE MEMO OPPOSING THE MOTION TO REMOVE MATTHEW T. FITZSIMMONS AS A PERSONALLY NAMED DEFENDANT-APPELLEE ARE GRANTED, AND THE MOTIONS TO CLASSIFY THE APPELLANT AS A VEXATIOUS LITIGATOR AND FOR SANCTIONS FOR FRIVOLOUS ACTION ARE GRANTED. VOL. 631 PG. 666. NOTICE ISSUED.
12/21/ 2006	N/A	JE	MOTION BY APPELLEES, NORTHEAST OHIO NEIGHBORHOOD HEALTH SERVICES, INC. AND TOTAL HEALTH CARE PLAN, INC., TO STRIKE APPELLANT'S DECEMBER 5, 2006 FILING IS DENIED AS MOOT. VOL. 626 PG. 650. NOTICE ISSUED.
12/18/ 2006	N/A	EV	OHIO SUPREME COURT CASE NO. 06-2302 - NOTICE OF APPEAL TO THE SUPREME COURT OF OHIO WITH MEMORANDUM IN SUPPORT OF JURISDICTION FILED BY APPELLANT, PRO SE, IN THE OSC ON DECEMBER 14, 2006
12/13/ 2006	N/A	JE	MOTION BY APPELLANT, PRO SE, TO RECONSIDER SANCTIONS/FEES IS DENIED. VOL. 626 PG. 13. NOTICE ISSUED.
12/12/ 2006	N/A	M O	MOTION BY APPELLEES, NORTHEAST OHIO NEIGHBORHOOD HEALTH SERVICES, INC. AND TOTAL HEALTH CARE PLAN, INC., TO STRIKE APPELLANT'S DECEMBER 5, 2006 FILING

12/12/ 2006	N/A	M O	APPELLEES', NORTHEAST OHIO NEIGHBORHOOD HEALTH SERVICES, INC. AND TOTAL HEALTH CARE PLAN, INC., MEMORANDUM IN OPPOSITION TO APPELLANT'S DECEMBER 5, 2006 FILING
12/05/ 2006	N/A	M O	MOTION BY APPELLANT, PRO SE, TO RECONSIDER SANCTIONS/FEES
11/15/ 2006	N/A	EV	OHIO SUPREME COURT CASE NO. 06-2073--NOTICE OF APPEAL TO THE SUPREME COURT OF OHIO FILED BY APPELLANT, PRO SE, IN THE OSC ON NOVEMBER 9, 2006
10/30/ 2006	N/A	JE	MOTION BY APPELLANT, PRO SE, TO STRIKE/DENY NEON/THCP'S, OCTOBER 2, 2006 AND OCTOBER 6, 2006 FILINGS IS DENIED. MOTION TO GRANT LEAVE TO FILE BRIEF IN OPPOSITION IS GRANTED. VOL. 623 PG. 82. NOTICE ISSUED.
10/30/ 2006	N/A	JE	MOTION BY APPELLEES, NORTHEAST OHIO NEIGHBORHOOD HEALTH SERVICES, INC. AND TOTAL HEALTH CARE PLAN, INC., FOR SANCTIONS, INCLUDING ATTORNEYS' FEES, COSTS AND EXPENSES IS GRANTED IN PART. PURSUANT TO APP.R. 23 AND UPON REVIEW OF THE TRIAL COURT FILE AND THE PLEADINGS FILED IN THIS APPEAL, THE COURT DETERMINES THAT THE APPEAL WAS FRIVOLOUS. THE COURT ALSO REVIEWED THE REQUESTED ATTORNEY FEES AND COSTS ASSOCIATED WITH APPELLEES'

			PLEADINGS FILED IN RESPONSE TO APPELLANT'S APPEAL AND ORDERS APPELLANT PRASAD BIKKANI TO PAY APPELLEE TOTAL HEALTH CARE PLAN, INC. THE SUM OF $1,360.00 AND APPELLEE NORTHEAST OHIO NEIGHBORHOOD HEALTH SERVICES, INC. THE SUM OF $1,400.00 AS AND FOR REASONALBE ATTORNEYS FEES AND THE $12.00 IN COSTS EXPENDED IN THE APPEAL. VOL. 623 PG. 81. NOTICE ISSUED.
10/24/ 2006	N/A	M O	APPELLEE, NORTHEAST OHIO NEIGHBORHOOD HEALTH SERVICES, INC. & TOTAL HEALTH CARE PLAN, INC.'S BRIEF IN OPPOSITION TO APPELLANT'S MOTION TO STRIKE/DENY NEON/THCP'S OCTOBER 2, 2006 AND OCTOBER 6, 2006 FILINGS, OR GRANT LEAVE TO FILE BRIEF IN OPPOSITION
10/16/ 2006	N/A	M O	MOTION BY APPELLANT, PRO SE, TO STRIKE/DENY NEON/THCP'S, OCTOBER 2, 2006 AND OCTOBER 6, 2006 FILINGS OR GRANT LEAVE TO FILE BRIEF IN OPPOSITION
10/06/ 2006	N/A	M O	MOTION BY APPELLEES, NORTHEAST OHIO NEIGHBORHOOD HEALTH SERVICES, INC. AND TOTAL HEALTH CARE PLAN, INC., FOR SANCTIONS, INCLUDING ATTORNEYS' FEES, COSTS AND EXPENSES
10/02/	N/A	M	APPELLEE'S BRIEF IN OPPOSITION

2006		O	TO APPELLANT'S MOTION FILED ON SEPTEMBER 22, 2006
09/27/ 2006	N/A	JE	MOTION BY APPELLANT, PRO SE, TO FILE BRIEF INSTANTER IS DENIED. VOL. 621 PG. 36. NOTICE ISSUED.
09/26/ 2006	N/A	BL	September 26, 2006: SUA SPONTE, APPEAL IS DISMISSED FOR LACK OF A FINAL APPEALABLE ORDER. R.C. 2505.02. VOL. 621 PG. 4. NOTICE ISSUED.
09/26/ 2006	N/A	JE	September 26, 2006: SUA SPONTE, APPEAL IS DISMISSED FOR LACK OF A FINAL APPEALABLE ORDER. R.C. 2505.02. VOL. 621 PG. 4. NOTICE ISSUED.
09/26/ 2006	N/A	JE	MOTION BY APPELLANT, PRO SE, FOR RECONSIDERATION IS DENIED. VOL. 620 PG. 993. NOTICE ISSUED.
09/22/ 2006	A1	EV	APPELLANT'S BRIEF FILED.
09/22/ 2006	N/A	M O	MOTION BY APPELLANT, PRO SE, TO FILE BRIEF INSTANTER
09/12/ 2006	N/A	M O	APPELLEES', NORTHEAST OHIO NEIGHBORHOOD HEALTH SERVICES, INC. AND TOTAL HEALTH CARE PLAN, INC., BRIEF IN OPPOSITION TO APPELLANT'S MOTION FOR RECONSIDERATION
09/07/ 2006	N/A	M O	APPELLANT'S RECONSIDERATION BRIEF IN SUPPORT OF MOTION FOR RECONSIDERATION
09/07/ 2006	N/A	M O	MOTION BY APPELLANT, PRO SE, FOR RECONSIDERATION
08/28/ 2006	N/A	SR	ANNOUNCEMENTOF COURT'S DECISION FILED (SEE APPELLATE RULE 26). COPIES MAILED COST

			TAXED
08/25/ 2006	N/A	EV	ORIGINAL PAPERS FILED BY TRIAL COURT.
08/25/ 2006	N/A	NT	RECORD ON APPEAL FILED AND NOTICE ISSUED TO ALL PARTIES.
08/24/ 2006	A1	EV	NOTICE OF APPEAL FILED FROM COMMON PLEAS, CIVIL DIVISION COURT , CASE # CV-566249 WITH JOURNAL ENTRIES, PRAECIPE, DOCKETING STATEMENT, AND COPY OF DOCKET SHEET.
08/24/ 2006	A1	SF	LEGAL RESEARCH
08/24/ 2006	A1	SF	LEGAL NEWS
08/24/ 2006	A1	SF	COMPUTER FEE
08/24/ 2006	A1	SF	CLERK'S FEE
08/24/ 2006	A1	SF	COURT OF APPEALS SPECIAL PROJECTS
08/24/ 2006	A1	SF	DEPOSIT AMOUNT PAID PRASAD BIKKANI
08/24/ 2006	N/A	SF	CASE INITIATED

FILED (by JM Capital Receiver and Creditors)

2009 Jan 06 PM 07:50 as Exhibit B
CLERK U.S. BANKRUPTCY COURT
NORTHERN DISTRICT OF OHIO CLEVELAND
In re. J.M. CAPITAL, LTD. (Bank. NE Dist of Ohio, Case No. 08-20123)

December 29, 2008

Mark Hanslik, Trustee
Miles Landing Homeowners Association

RE: Termination of Keith J. Barton

Mark:

I understand there may be some concern/controversy about the transition of responsibilities after my termination as General Counsel for the Miles Landing Homeowners Association. I hope this letter will clarify any confusion.

Friday December 19, 2008 the board of trustees for the Miles Landing Homeowners Association met after an emergency board meeting was requested by Marion Mauldin. Bylaws Article VI, Section 2 states as follows:

> "Special meetings of the Board of Trustees shall be held when called by the president of the Association, or by any two Trustees, after less than (3) days notice to each director."

Marion Mauldin requested the meeting with not less than 3 days notice but the meeting was not called by the president, nor was it called by two Trustees as required by the Bylaws. The meeting went forward anyway.

At this meeting, the board discussed terminating Keith Barton as General Counsel for the association. John MacDonald, president of the association, tabled the discussion until Friday December 26, 2008. John MacDonald also requested a proposal/plan with regards to improving the financial situation of the association. I communicated to the board that I needed access to the office and its resources to produce this report. I also communicated to the board that even if my termination were effective immediately, I would need the resources of the office to severe my official ties to the association (e.g., drafting and filing motions to withdraw as legal counsel – courts must approve termination of the attorney client relationship for any existing cases, preparation and filing of my resignation as statutory agent for the association; etc....)

I came to the office Monday morning to work on the tasks I needed to complete. The lock had been changed and I was unable to gain entrance to the office. I worked from another location starting the task of drafting motions to withdraw as counsel for the association. Another emergency meeting of the board of trustees was called for the morning of Tuesday December 23, 2008. I was allowed access to retrieve my belongings from the office.

I was granted a very limited time to my belongings from the office. As part of this cleanup I removed electronic files from the office computer and paper files from the office. These electronic files included information related to my representation (with association knowledge and approval) of John MacDonald, J. M. Capital, Ltd, Mark Hanslik, and Hanslik Properties in various matters. Paper files removed included information related to the representation of John MacDonald, J. M. Capital, Ltd, Mark Hanslik, and Hanslik Properties in various matters.

I also, in my haste, removed electronic copies of files I prepared while representing the association.

Paper files for all association lawsuits in progress since November 2005 (to include those files provided by Kaman & Cusimano); paper files containing all historical financial information from Renner Management Group; paper files containing any historical and/or current financial information related to billing or vendors, etc...; and, electronic files containing official financial records (both current and historical from November 2005) of the association remained in the physical possession of the association at the association office. Al office productivity software not licenses to the association (e.g. Microsoft Word, Microsoft Excel, etc...) was removed from the association computer, as they were my personal copies of the software.

When I took over operation of the association from Renner Management Group and from the law firm of Kaman & Cusimano, the association received records in PAPER FORMAT ONLY. In addition, lawsuit case files given to the association were only those case files that were currently in litigation as part of an OPEN AND UNRESOLVED case. Closed case files were NOT PROVIDED to the association. All financial information provided by Renner Management Group was provided in PAPER FORMAT ONLY. In addition, NO FINANCIAL RECORDS were provided for those unit owners who were current in the payment of their maintenance fees. In other words, if Renner showed a unit owner owed no money as of November 2005 – NO FINANCIAL INFORMATION concerning that unit owner was transferred to the association.

As can be seen by the information above, I left the association with more information than did the previous legal counsel and the previous management company. In an effort to ease the transition of the association's operations, I am providing you with a DVD of the electronic files produced during the time I represented the association.

As is to be expected, there are probably several questions regarding the status of various lawsuits and the status of various financial or other operational matters. Unfortunately, I was prevented from providing a smooth transition of information and responsibilities by the sudden termination by the board of trustees; and by the board's refusal to allow from winding down operations. I am available (as consultant and for a fee) to answer any transition questions the association may have on any matter. Please feel free to contact me should you have any questions regarding this matter.

Sincerely,

(Signed)
Keith J. Barton

I, Mark Hanslik, acknowledge receiving from Keith Barton, a DVD containing electronic files related to the operations of the Miles Landing Homeowners Association.

_(Signed)_____ 12/30/2008
Mark Hanslik Date
12/30/08

I received the amount listed below upon closing of the Miles Landing Homeowners Association checking account #715133799 with Chase bank.

Amount 228.30 – 91.03 = 137.28

(Signed)

_____
MARK HANSLIK

UNITED STATES BANKRUPTCY COURT

NORTHERN DISTRICT OF OHIO

EASTERN DIVISION

In re:) Case No. 08-20123
J.M. CAPITAL, LTD.,) Chapter 11
Debtor.) Judge Pat E. Morgenstern-Clarren
) **MEMORANDUM OF OPINION**

Official court stamp January 15, 2009 (11:59 am)

The debtor J.M. Capital, Ltd. was operating under a state court receivership when it filed this chapter 11 case. Secured creditors CapFinancial III, LLC and CapFinancial Properties III, LLC move to dismiss, or alternatively, for this court to abstain so that the receiver may continue with his responsibilities, Docket 12. The debtor opposes the motion, Docket 12. For the reasons that follow, the motion to dismiss is granted.

I. JURISDICTION

Jurisdiction exists under 28 U.S.C. § 1334 and General Order No. 84 entered by the United States District Court for the Northern District of Ohio. This is a core proceeding under 28 U.S.C. § 157(b)(2)(A) and (O).

At that time, the court also heard evidence relating to the state court receiver's motion to excuse turnover of property to the debtor. (Docket 11). That motion is moot in light of the decision reached in this memorandum.

II. THE POSITIONS OF THE PARTIES

CapFinancial III, LLC and CapFinancial Properties III, LLC (collectively, CapFinancial) seek to dismiss this case under 11 U.S.C. § 305(a) so that the state court receiver, who has been in place for more than seven months, may continue to administer the debtor's assets. They contend that this is in their best interests because it

is the most economical way to proceed. Alternatively, CapFinancial argues that the case should be dismissed under 11 U.S.C. § 1112(b), claiming that the debtor will not be able to rehabilitate itself and the case was filed in bad faith. Two other secured creditors, and the receiver, support the motion.

The debtor argues that it filed the chapter 11 case because it was dissatisfied with the receiver's efforts to increase revenue and locate a buyer. The debtor contends that the bankruptcy proceeding will permit it to increase income, begin to pay the secured debt, and ultimately sell its real estate for enough money to pay all debt.

III. FACTS

A. The Evidentiary Hearing

The court held an expedited evidentiary hearing on the motion to dismiss on January 12, 2009 (There was testimony at the hearing about actions taken by Keith Barton, counsel to Mr. MacDonald personally and former general counsel to the association. That evidence was tangential to the issues presented here, and so is not recounted).

CapFinancial presented its case through these witnesses: Myron Muldur (from PrinsFinancial, the managing member of CapFinancial), Robert Weltman (representing Dennis Gehrisch), Michele Wickman (from Park View Federal Savings Bank), Mark Dottore (state court receiver); cross-examination of the debtor's witnesses; and documents. The debtor presented its case through the testimony of John MacDonald (the debtor's sole member), John Deskins (a contractor who does work on the debtor's property), and Bernard Martin (the debtor's leasing agent and property manager); cross-examination of the movant's witnesses; and documents. These findings of fact are based on that evidence and reflect the court's weighing of the evidence presented,

including determining the credibility of the witnesses. "In doing so, the Court considered the witnesses' demeanor, the substance of the testimony, and the context in which the statements were made, recognizing that a transcript does not convey tone, attitude, body language or nuance of expression." *In re The V Cos.*, 274 B.R. 721, 726 (Bankr. N.D. Ohio 2002). *See* FED. R. BANKR. P. 7052 (incorporating FED. R. CIV. P. 52 and applicable in contested matters under FED. R. BANKR. P. 9014). When the court finds that a witness's explanation was satisfactory or unsatisfactory, it is using this definition:

> The word satisfactory may mean reasonable, or it may mean that the Court, after having heard the excuse, the explanation, has that mental attitude which finds contentment in saying that he believes the explanation—he believes what the [witness] say[s] with reference to the [issue at hand]. He is satisfied. He no longer wonders. He is contented.

United States v. Trogdon (In re Trogdon), 111 B.R. 655, 659 (Bankr. N.D. Ohio 1990) (internal citations and quotation marks omitted).

B. The Debtor's Assets

The debtor's only significant asset is a group of townhouses in Warrensville Heights, Ohio in an area known as Miles Landing. The entire Miles Landing area consists of approximately 375 units built in the 1940s; of those, the debtor currently owns 77 units. The debtor's units (the property) are scattered over 6-8 residential streets. J.M. Capital purchased the property in 1999 with financing obtained from The Peoples Banking Company, as evidenced by promissory notes secured by mortgages on the property. John MacDonald is a personal guarantor on the notes.

The units were in disrepair when purchased and Mr. MacDonald's plan was to renovate the units and sell them, either individually or as a group. Although J.M.

Capital invested about $3 million in the property, the financial plan did not work out, in part—as admitted by Mr. MacDonald—due to his bad management. In 2005, The Peoples Banking Company transferred the notes to CapFinancial and assigned the mortgages to it as well, in exchange for a payment that was not quantified at the hearing. The notes were in default at the time, and Mr. MacDonald's business plan was to refinance the debt.

J.M. Capital sold some of the units after that, with the last sale taking place in July 2007. Everyone involved agrees that the real estate market has deteriorated and potential buyers generally are not able to get financing to purchase the units either individually or in bulk. When CapFinancial purchased the notes, the units were selling for about $80,000.00–$95,000.00. Today, CapFinancial estimates that each unit might be worth in the range of $20,000.00 in a bulk sale of the property. The auditor's market value averages about $15,000.00–$25,000.00 per unit.

An association known as the Miles Landing Homeowners Association exists to address issues of common concern among the owners of units. J.M. Capital owes the association about $600,000.00 in maintenance fees[5]. ([5]There was testimony at the hearing about actions taken by Keith Barton, counsel to Mr. MacDonald personally and former general counsel to the association. That evidence was tangential to the issues presented here, and so is not recounted.)

J.M. Capital's overall financial situation did not improve. Although it made some payments on the debt, it remained in default. CapFinancial called the notes in June 2007.

C. The State Court Proceedings

On March 14, 2008, CapFinancial obtained a state court judgment against the debtor in the principal amount of $1,215,490.23 plus interest; the amount owed

as of the hearing is about $1.4 million. CapFinancial then filed a state court complaint to foreclose on the mortgages that secured the notes (Case No. CV 08 659315, Cuyahoga County Court of Common Pleas). The complaint named as defendants other parties claiming an interest in the 6 property, including Park View Federal (secured debt of about $830,600.00), Dennis Gehrisch (secured debt of about $1.15 million), George Guider (secured debt of about $125,000.00), and the Cuyahoga County Treasurer (tax liens). CapFinancial also moved to appoint a receiver to safeguard the property, given the failure to pay the secured debt, the decline in the property's value, and the failure to maintain insurance.

On May 20, 2008, J.M. Capital, John MacDonald, CapFinancial, Dennis Gehrisch, and Park View Federal entered into an agreed order appointing Mark Dottore as receiver for J.M. Capital. The order authorized the receiver to operate the business, manage the property, and market the property for sale or lease.

When the receiver took over, he found that the real estate taxes were in default, some utility bills were unpaid, CapFinancial was paying for expensive force-placed insurance, and there were life safety issues in a few units. He negotiated a payment schedule for the taxes (a process initiated by Mr. MacDonald), arranged to pay the delinquent water and sewer bills, and—when funds became available—used rental income to pay for insurance. All of the rental income is being devoted to renovation, maintenance, taxes, and utility payments, with no funds currently available to pay the secured creditors.

The monthly rent is $655.00 for a two bedroom unit and $765 00 for a three bedroom unit. Of the 77 units owned by the debtor, about 56 are rented; the remaining units are vacant either because they need work or because a tenant has not yet been found. Of the 56 occupied units,

at least 22 tenants are in default of their rent obligations for January 2009. In addition to trying to find renters, the receiver has been looking for buyers for the property. This poses many challenges: the units making up the property are spread out over several streets (rather than being physically consolidated), there are issues with crime, there are many competing units in the neighborhood, and the lending environment is frozen. At the time of the hearing, the receiver had two purchase offers, one for $1.8 million and another in the range of $2.1 to $2.5 million. In the receiver's opinion, both potential buyers have access to financing.

The receiver has filed short monthly reports with the state court. He only put two of them into evidence; each states broad categories of activity and lists expenses, without invoices. The fees paid by the receiver to himself are listed in one report as a total amount for the month, without a breakdown of actor, time, and activity.

The secured creditors who testified believe that the receiver has stabilized the situation and they are satisfied with his performance. Although the property does not yet generate enough income to support making payments on the secured debt, these creditors agreed that the priority was to make necessary repairs first, with debt payments following. They all ask that the bankruptcy case be dismissed so that the receiver may remain in place. Mr. MacDonald's dissatisfaction with the receiver stems from two issues: the amount of the receiver's monthly fees (too high) and the amount of the purchase offers under negotiation (too low).

D. The Bankruptcy Case

The debtor filed this chapter 11 case on December 24, 2008 to regain control of the property and market it for a higher price. The filing had these omissions and errors:

(1) The debtor estimated that funds would be available for distribution to unsecured creditors, yet the assets are listed at 0–$50,000.00 and the liabilities at $1 million to $10 million. Mr. MacDonald testified that he did not think the asset value included the real property value.

(2) The only creditor listed as holding an unsecured claim is Gerri Burch, who Mr. MacDonald testified is not actually a creditor. The debtor knew about, but did not include, the Miles Landing Homeowners Association claim of more than $600,000.00.

(3) The debtor did not list as secured creditors CapFinancial, Park View Federal, or Dennis Gehrisch.

(4) The debtor did not give notice of the filing to the receiver.

(5) The debtor did not file these documents with the petition: disclosure statement, corporate ownership statement, schedules A through H, statement of financial affairs, and summary of schedules.

CapFinancial is not prepared to offer debtor-in-possession financing, and there was no evidence that such financing would be available from another source. The debtor did not file a motion to use cash collateral and did not reach agreement with the secured creditors to do so. Nevertheless, in the three weeks between the case filing and the hearing, Mr. MacDonald either signed or authorized the issuance of five checks on the debtor-in-possession account, including one to pay his personal child support payment.

Mr. MacDonald testified as to the components of his intended chapter 11 plan:

(1) immediately rent the vacant units, thus increasing the cash flow;

(2) do a better job of collecting the rent on time;

(3) use the increased cash flow to pay some amount to the secured creditors, starting in a few months;

(4) hold the property until the broader financial situation improves and credit is more readily available to individuals and investors;

(5) at that point, sell the property either to individuals buying a single unit or an investor buying the property as a whole, at a price per unit of about $47,000.00;

(6) pay all creditors in full with the sale proceeds; and

(7) retain some value for himself and his family.

IV. DISCUSSION

A. 11 U.S.C. § 305(a)

After notice and a hearing, a court may dismiss a case or suspend all proceedings under 11 U.S.C. § 305(a)(1) when "the interests of creditors and the debtor would be better served by such dismissal or suspension." 11 U.S.C. § 305(a)(1). "The decision to dismiss or suspend under 305(a) is discretionary and must be made on a case-by-case basis." *In re Fortran Printing, Inc.*, 297 B.R. 89, 94 (Bankr. N.D. Ohio 2003) (citation omitted). The factors used to determine whether dismissal or suspension is appropriate include:

(1) economy and efficiency of administration;

(2) whether another forum is available to protect the interests of both parties or there is already a pending proceeding in state court;

(3) whether federal proceedings are necessary to reach a just and equitable solution;

(4) whether there is an alternative means of achieving an equitable distribution of assets;

(5) whether the debtor and the creditors are able to work out a less expensive out-of-court arrangement which better serves all interests in the case;

(6) whether a non-federal insolvency has proceeded so far in those proceedings that it would be costly and time consuming to start afresh with the federal bankruptcy process; and

(7) the purpose for which bankruptcy jurisdiction has been sought.

Id. at 94-95. Where a state court receivership is in place before the bankruptcy case is filed, the best interests of the debtor and its creditors are generally served by dismissal. *See, e.g., Monsour Medical Center, Inc. v. Stein (In re Monsour Medical Center, Inc.)*, 154 B.R. 201, 207 (Bankr. W.D. Penn. 1993); *In re Michael S. Starbuck, Inc.*, 14 B.R. 134, 135 (Bankr. S.D.N.Y. 1981); *In re Sun World Broadcasters, Inc.*, 5 B.R. 719, 722 (Bankr. M.D. Fla. 1980).

In this case, it is clear that the best interests of all concerned will be served by dismissal. The receiver, with the debtor's consent, has had custody and control of the debtor's only significant asset since May 20, 2008. He has employed professionals to repair and maintain the properties and collect rent since his appointment. The secured creditors who testified are all satisfied with the manner in which the receiver has applied the rent payments to date. He has pursued additional tenants and solicited purchase offers for the property. The state court is available as a forum to achieve an equitable distribution of the debtor's assets. Mr. MacDonald is free to participate in the state court process by continuing to identify potential renters, as well as to solicit competing offers for the property. Any sale will be done under state court supervision, so Mr. MacDonald will be able to object to the price if he wishes to do so.

Mr. MacDonald filed for bankruptcy protection so that he may rehabilitate the debtor. He does have a plan for doing that, but there was little or no credible evidence that the plan is realistic and can be carried out within a reasonable time frame. His first action point is to fill all the rental vacancies. This is the same focus that he had before the receiver was appointed and has also been a target area for the receiver. This leads the court to

conclude that the plan is unlikely to succeed now when it did not succeed before. Bernard Martin, the property manager, hopes to increase the number of tenants by soliciting tenants eligible for federal housing subsidies. He testified, however, that he has been focusing on this tenant population for several months. Mr. Martin also hopes to build on the rent-to-own market by encouraging rental tenants to begin to rehabilitate their credit so that they will be positioned to get financing when the credit market thaws. Additionally, the debtor wants to work with existing renters to obtain FHA financing to purchase their residences. Since about half of the renters are currently in default, they do not seem to be a promising borrower population. These are all good ideas, but there was no credible evidence that these can be put into effect in a way that would make an appreciable difference any time in the near future.

Mr. MacDonald's plan also calls for selling the property for about $4 million after the credit market recovers. He has not had any conversations with potential buyers willing to pay this price. The court cannot, therefore, credit this part of the plan as anything other than a hope.

The evidence also showed that the disputes between the parties will proceed more economically before the state court. The receiver has been filing monthly reports with the state court. If this chapter 11 case continues, the debtor will have to duplicate some of that financial work when it complies with the United States trustee's reporting requirements, and will also have to pay quarterly administrative fees. Mr. MacDonald is unhappy with the fees being charged by the receiver and the receiver's attorney. This court does not have a factual basis to assess that issue because the fee statements were not in evidence. In any event, the state court appointed

the receiver and presumably will be available to hear any issues relating to the claimed compensation.

In sum, the court finds that time and resources will be wasted by continuing this chapter 11 case, when the state court receivership has been operating effectively since May of 2008, and Mr. MacDonald's purpose for seeking bankruptcy protection appears to be that he regrets his choice to proceed in state court. "[A] disgruntled player should not be heard to complain at the end of the fourth quarter that the game would have been better played in another stadium." *In re Sun World*, 5 B.R. at 722-23. Because the interests of both the debtor and its creditors would be best served by allowing the state court receivership to continue, CapFinancial's motion to dismiss under 11 U.S.C. § 305(a) is granted.

B. 11 U.S.C. § 1112(b)

Alternatively, the court may for "cause" dismiss a chapter 11 case or convert it to chapter 7. 11 U.S.C. § 1112(b). The relevant part of § 1112(b) provides:

> (b)(1) . . . [O]n request of a party in interest, and after notice and a hearing, absent unusual circumstances specifically identified by the court that establish that the requested conversion or dismissal is not in the best interests of creditors and the estate, the court shall . . . dismiss a case under this chapter, whichever is in the best interests of creditors and the estate, if the movant establishes cause.

Section 1112(b)(4) lists several situations that amount to "cause", but the list is not exclusive. *In re Gonic Realty Trust*, 909 F.2d 624, 628 (1st Cir. 1990); *In re The V Cos.*, 274 B.R. at 725. *See* 11 U.S.C. § 102(3) (the words "includes" or "including" are not limiting). Cause to dismiss may also exist, for example, where the debtor filed the case in bad faith. *In re The V Cos.*, 274 B.R. at 725.

Lack of good faith is determined on a case-by-case basis, and often includes an analysis of these factors:

(1) the debtor has one asset;

(2) the pre-petition conduct of the debtor has been improper;

(3) there are only a few unsecured creditors;

(4) the debtor's property has been posted for foreclosure, and the debtor has been unsuccessful in defending the foreclosure in state court;

(5) the debtor and one creditor have proceeded to a standstill in state court litigation, and the debtor has lost or has been required to post a bond which it cannot afford;

(6) the filing of the petition effectively allows the debtor to evade court orders; (7) the debtor has no ongoing business or employees; and (8) the lack of possibility of reorganization.

*** *citation references omitted****

CapFinancial asserts that cause exists because the case was filed in bad faith, and the debtor lacks the ability to reorganize. Applying the relevant factors, the court agrees. The debtor has only one asset, the property. Mr. MacDonald conceded that some of the debtor's historical problems stem from his poor management. There are few unsecured creditors, and it is unlikely that the property would be sold in a bankruptcy proceeding for an amount high enough to pay the secured debt and costs of administration with any funds left for the unsecured creditors. The filing of the petition allowed the debtor to evade the effect of the state court order, in the face of the debtor's own agreement. In the three weeks that the debtor has been under the protection of the bankruptcy court, the debtor filed materially inaccurate information and used cash collateral without permission.

Additionally, the evidence showed that the debtor is unlikely to be able to reorganize. The debtor needs money to operate; CapFinancial will not provide debtor-in-possession financing and there was no evidence that any other lender would step in to do so. Based on CapFinancial's testimony, it will also oppose the debtor's plan as outlined by Mr. MacDonald. It is, therefore, unlikely that the debtor can propose a confirmable plan and be reorganized. Further, it appears Mr. MacDonald simply wants to regain control over his company because he believes the receiver is not properly marketing it for sale. Based on all of these factors, CapFinancial has shown that it is more likely than not that the debtor's petition was filed in bad faith. With cause to convert or dismiss being established, the court finds that dismissal is the appropriate action. Therefore, the motion to dismiss under 11 U.S.C. § 1112(b) is granted.

V. CONCLUSION

For the reasons stated, the motion of CapFinancial III, LLC and CapFinancial Properties III, LLC is granted and the case is dismissed under 11 U.S.C. §§ 305(a) and 1112(b). A separate order will be entered reflecting this decision.

Pat E. Morgenstern-Clarren, US Bankruptcy Judge

APPENDIX U

TOTAL HEALTH CARE PLAN Inc

(On letter head with logo)

April 24.2001

Mr. Prasad Bikkani
5930 Stephanie Lane
Solon, Ohio 44139

Re: Your Claim(s) Against Total Health Care Plan, Inc. In Rehabilitation filed December 15, 2000

Dear Prasad:
Total Health Care Plan, Inc. (THCP) remains in Rehabilitation and under the direct supervision of the Ohio Department of Insurance. On October 25, 2000 all Trade Vendors, Commercial Enrollees and Employees were sent a "Proof of Claim" package for claims with dates of services before July 26, 2000. Your "Proof of Claim(s)" has been re-evaluated, and this notice will advise the final disposition of your claims.

Allowed Claim(s)

The following claim(s) are allowed:

Claim One

Your claim has been valued at $ 13,045.76 by the Deputy Rehabilitator. This payment is in accordance with the Severance Pay Policy in offered to you in April 1999.

Claim Two

Your claim has been valued at $ 6,500.00 by the Deputy Rehabilitator. This claim represents payment for your attendance at a Windows NT training program.

Claim Three

Your claim has been valued at $ 326.16 by the Deputy Rehabilitator. This claim represents a personal day not appropriately compensated.

Claim Four

Your claim has been valued at $ 5,000.00 by the Deputy Rehabilitator. This claim represents a one-time payment adjustment for interest owed for the Vacation pay distributed last June and the Severance Pay to be issued with this letter.

Rejected Claim(s)

Total Health Care Plan, Inc. In Rehabilitation rejects the following claims you filed on December 15, 2000:

Claim One

We find nothing in the records to justify your claim for $ 90,000 for the loss of income.

Claim Two

We find nothing in the records to justify your claim for $3,261.60 identified as "Additional Severance Pay". This payment identified on page 19 of THCP's published Employees' Personnel Policies and Procedures dated 1966 is the Plan's severance plan. With your dismissal, the Plan chose to administer a more enhance severance benefit. If you accept the dollars allowed in Claim One, this claim is forfeited.

Enclosed for review and execution are two (2) copies of the "*Mutual Release in Full of All Claims*" against Total Health Care Inc., In Rehabilitation. Please execute both copies and return in the self-addressed envelope provided. A fully executed copy will be returned to you with payment.

The following is a summary of post - rehab salary and benefits to be administered by the Office of Deputy Rehabilitator;

- Contracted Consulting Fees
- Recovery Bonus

During the fourteen (14) years of the Plan's history, dedicated individuals like yourself, made this a wonderful program for the community it served. Prasad, I have truly

enjoyed working with you. I am so happy that you agreed to help us. Without your efforts, computer skills, and pride in getting the job done right ... we would not have been as successful in our efforts. Thanks for always being there. I am truly going to miss working with you. Your business acumen, knowledge and strong business skills have certainly helped this "team" working through the Rehabilitation process. How do 1 ever say thank you? Wishing you the very best.

Very truly yours,
(Signed)
Mary Jo Lopez
Deputy Rehabilitator

Total Health Care Plan, Inc. In Rehabilitation

MUTUAL RELEASE IN FULL OF ALL CLAIMS

The undersigned do hereby mutually and forever release and discharge one another from any and all actions, causes of action and claims which have accrued or which may accrue arising from or relating to services and/or goods provided to or on behalf of Total Health Care Plan including any claim or counterclaim or relationship, contract, agreement or understanding of any nature whatsoever between the parties or between any of them for and in consideration of the sum of **$24,545.76** paid by or on behalf of Total Health Care Plan, Inc. In Rehabilitation to **Prasad Bikkani**. the receipt of which is hereby acknowledged.

The undersigned hereby further represent and covenant that they have complete and final authority to release any and all possible claims and counterclaims and that this Mutual Release in Full of All Claims and counterclaims is entered into after full opportunity for discovery in consultation with legal counsel by all parties.

This Release extends and applies to all unknown, unforeseen, unanticipated and unsuspected damages, loss and liability and the consequences thereof. The provisions of any local, state or federal law providing in substance that a release will not extend to claims, demands and damages which are unknown or unsuspected to exist at the time to the persons executing such release is hereby expressly waived.

It is further agreed and understood that payment of the aforesaid amount is not to be construed as an admission of any liability on the part of any or all of the undersigned.

The parties hereto agree that neither has any obligation concerning any attorneys fees incurred by or on

behalf of the other party and waives for themselves and their attorneys all rights to attorney's fees arising as a result of any suit.

The undersigned state that they have read and understand that this is a Mutual Release in Full of All Claims, that they intend to be legally bound hereby, that they all have both actual and apparent authority to execute this Mutual Release in Full of All Claims and that they have not heretofore assigned or otherwise transferred to any person, firm, corporation or other entity not a signatory hereto any claim or cause of action against any other party hereto and, further, that they are entering into this Mutual Release in Full of All Claims voluntarily and of their own free will. Further, both parties acknowledge that this release has been read and approved by their attorneys.

This document and the terms of this agreement are to be treated as confidential by the parties. The terms and conditions contained in this agreement are not to be transmitted or communicated in any way to any outside party absent the express written consent of the parties. If either party becomes legally compelled, or is required by a regulatory body to make any disclosure that is prohibited or otherwise constrained by this agreement, that party shall provide the other party with prompt written notice of such request so that it may seek a protective order or other appropriate remedy.

The parties hereto have executed or caused this release to be executed by themselves individually or by their duly-appointed officers as of the date set opposite their respective signatures.

Total Health Care Plan, Inc.	Prasad Bikkani
In Rehabilitation	
By: _____	By: _____
Its: _____	Its: _____
Date: _____	Date: _____

APPENDIX W

4/26/2001

From: Prasad Bikkani
5930 Stephanie Lane
Solon, Ohio 44139
(440) 542-0703

To: Attn Mary Jo Lopez
THCP Deputy Rehabilitator
(With the approval of the Court/
ODI/ODHS/AG)

Sub: Your 4/24/2001 evaluation of 12/15/2000 submitted 6 claims with accepting 4 with the awarded amounts of $13,045.76, $6,500, $326.16, $5,000.00 and unusually rejecting two with your notated amounts of $90,000 and $3,261,60 (not one of the submitted amounts)

- Though I could not execute the mutual release you proposed with the above 4 claims award, first, I thank you very much for your comments on the last paragraph, which states in part:

"...During the fourteen (14) years of the Plan's history, dedicated individuals like yourself, made this a wonderful program for the community it served. Prasad, I have truly enjoyed working with you. I am so happy that you agreed to help us. Without your efforts, computer skills, and pride in getting the job done right ... we would not have been as successful in our efforts. Thanks for always being there. I am truly going to miss working with you. Your business acumen, knowledge and strong business skills have certainly helped this "team" working through the Rehabilitation process. How do I ever say thank you? Wishing you the very best..."

- It is my pleasure working with you and fulfilling the tasks you assigned to me including the recovery of

several million dollars to pay off the creditors and to have excess to make the company survive. As you have noticed, it is my pleasure to fulfill the task, upon assignment, as quick as possible and or to meet your and regulatory deadlines. It was done, irrespective of the limited number of hours you are able to pay per any worked day and at times worked as many as 20+ hours per day.

- All along you indicated that State would prosecute the SMG and or other wrongdoers for crippling THCP, but in recent months you indicated as if State would not pursue that task as more funds were recovered by us beyond the needed ones. As I discussed, it is still a concern to encourage wrongdoers and also NEON trustee Matthew Fitzsimmons did not disclose his conflicting roles and pursuing for THCP excessive assets by claiming NEON-THCP's subsidiary relationship. While addressing in section III for "**Outstanding Claim that was not addressed by you**", below I listed some references where NEON/Matthew Fitzsimmons role conflicts. Continued suppression of facts undermines the roles of the Court, ODI, ODHS, and AG offices, hopefully they will know the facts soon, and none of you should be compelled to giveaway THCP to NEON in the dark.
- Once again, thank you very much for accepting 4 of the claims and listing below your accepted 4 claims and two rejected claims to match to my notation on the claims for easy cross reference to highlight the mismatching claim:

I	Your accepted Claim	My referenced Claim	Comment, if any
a)	Claim One $13,045.76	Claim 1 of 6 Partial	Thank you very much for recognizing the

			impropriety, including the role played by NEON's trustee Matthew Fitzsimmons and for granting it
b)	Claim two $6,500.00	Claim 5 of 6 Partial	Thank you very much for recognizing the discrimination while granting to Stephen Eugene and Tiffany McDaniel) but withholding my amount improperly and noting the role played by Robert McMillan, NEON trustee Matthew Fitzsimmons etc.
c)	Claim Three $326.16	did you create it on your own from my listing sheet?	Thanks for picking up additional claim out of the listed sheet, though not submitted as a separate claim, or is it Claim 6 of 6 a Partial one?
d)	Claim four $5,000.00	Interest part for Claim 2 of 6, Claim 1 of 6, Claim 5 of 6, etc	Thanks for awarding the interest amount on the amounts payable but improperly withheld as part of retaliation and or discrimination.
II	**Your Rejected Claims**		
a)	Claim One $90,000	Claim 3 of 6	You indicated - nothing in the record to justify the Loss of income. Please let me know as to what proof you want to

			show that I did not earn income during that time.

b) <u>Claim two $3, 261, 60:</u> Which claim for this big amount?

<u>i) You referred as if THCP published Employees' Personnel Policies dated 1966 severance plan. I am not aware of 1966 publishing but I was given 1993 Employee's Personnel Policies bulleting with CNHSI/NEON, THCP, and CIS (Community Integrated Service names on it)</u>

ii) You also mentioned that with my dismissal, as if the Plan chose to administer a more enhanced severance benefit. I am not sure as to which one is more comprehensive, but refer to Donald Butler's September 1997 memo to Virginia Eatmon with 2 month's Severance pay or to the severance paid in 1999 to Jacky Delaney to further note the discrimination and or retaliation applied against me.

iii) You indicated that if I accept your "Claim I" amount, as if I should forfeit this $3,261,60 amount. Since it is a big amount, I forfeit your claim I amount and accept this $3,261,60 amount. Please acknowledge so that I will sign the mutual release forms.

III	**Outstanding Claim that was not addressed by you**

a) **<u>Claim 4 of 6 Wrongful discharge (listed amount as "negotiable amount"):</u>** You have noticed that

i) NEON trustee Matthew Fitzsimmons played a significant role to discharge me improperly under the name of project Slim fast (see separation agreement, NEON Claims processing memos with Donald Butler), besides to please SMG/Rotan Lee to facilitate their false claims and to award bonus (See 1999 Barry Scheur's letter to Rotan Lee, project slim fast memos to the board stating Matthew Fitzsimmons role with fictitious savings)

ii) Discriminated and occupied THCP as they wished, provided my positions to Christina Burke (see 8/11/1999 appointment letter) and other appointments.

iii) NEON/trustee Mr. Fitzsimmons used SMG/Rotan Lee to cripple THCP by targeting some efficient individuals under the name of Project SlimFast.

iv) SMG-NEON collaboration improperly allowed NEON to withhold THCP loaned $1 million surplus/note without the knowledge of THCP trustees, when THCP needed the most (see 1/14/2000 secretive delay of payment/waiver by Rotan Lee to NEON without the trustees' knowledge – and see 1997 through 2000 communications between NEON/THCP, and or trustee Matthew Fitzsimmons where they indicated as if subsidiary relationship does not exist, and as if Fitzsimmons acting as trustee and or helped to convert THCP funds/cripple – see Plante-Moran report).

This claim is one of the important ones and still you or the company that gets THCP, if it is required, or the board of trustees should resolve.

Sincerely,
(signed) 4/26/2001
Prasad Bikkani

ORIGINAL

NON-UNION EMPLOYEES 40 YEARS OF AGE OR OLDER

SEPARATION AGREEMENT AND RELEASE

This SEPARATION AGREEMENT AND RELEASE ("Agreement") is made This **25 day of June**, 1999 by and between TOTAL HEALTH CARE PLAN, INC. ("Employer") and Prasad Bikkani ("Employee"), residing at **5930 Stephanie Lane, Solon, Ohio 44139.**

WHEREAS, Employee and Employer mutually desire to terminate their employment relationship;

NOW, THEREFORE, in consideration of the mutual promises and covenants set forth in this Agreement, the parties agree as follows:

1. **Separation from employment.** Upon execution of this Agreement, Employee will voluntarily tender a letter of resignation to Employer and terminate his/her employment with Employer, with an effective date of **June 25, 1999.** Upon execution of this Agreement, Employee further agrees to return to Employer any and all employer property acquired during his/her term of employment including, but not limited to, any laptop, cellular phone, beeper, file key, Employer building pass keys, and all other Employer property.

2. **Consideration.** In consideration for Employee signing this Agreement, Employee shall receive: Severance Pay: $11,871.45, Vacation Pay: $20,519.54 (503.3/hrs).

A. Total gross payment of **$32,391.00**, less withholdings under applicable federal, state, or local law, in one lump sum payment, for earned wages, amount outstanding for vacation and sick leave, severance

amount, and all other sums due Employee no later than ten (10) days following the date of the execution of this Agreement.

B. Coverage under Employer's health insurance plan through the end of the month of Employee's termination. Thereafter, Employee shall be entitled to exercise his/her COBRA payments to Employer. (The Employee has separately received a notice of his/her COBRA, rights.)

3. **No additional benefits.** Employee acknowledges and agrees that he/she shall receive no benefits additional to those set forth in this Agreement.

4. **Release of claims.** Employee stipulates, agrees, and understands that in consideration of the payments and other consideration set forth in paragraph 2 above, that being good and valuable consideration, Employee, hereby acting of his/her own free will, voluntarily and on behalf of himself/herself, his/her heirs, administrators, executors, successors and assigns, releases Employer and its subsidiaries, affiliates, trustees, officers, employees, agents, attorneys, successors and assigns and each of them ("Releasees"), from any claim, demand, loss, right, cost, expense, action, cause of action, obligation, damage, liability, and claim for relief of any kind or description whatsoever, in law or equity, whether known and/or unknown and/or accrued, in tort, contract, by statute, or on any other basis, for compensatory, punitive, or other damages, expenses, attorneys' fees, reimbursements, or costs of any kind, including, but not limited to, any and all claims, demands, losses, rights, costs, expense, action, causes of action, obligation, damage, and liability, and claim for relief of any kind or description whatsoever, in law or equity, whether known and/or unknown and/or accrued, arising out of his/her employment with Employer including the termination of employment and written employment agreement, if any, or any alleged oral

promise or modification, or relating to purported employment discrimination or violations of civil rights, such as, but not limited to, those arising under Title VII of the Civil Rights Act of 1964 as amended, the Civil Rights Act of 1991 as amended, the Older Workers Benefit Protection Act as amended, the Civil Rights Acts of 1866 and/or 1871 as amended, the Age Discrimination in Employment Act of 1967 as amended, the Americans With Disabilities Act of 1990 as amended, Executive order 1124 6, the Equal Pay Act of 1963 as amended, the Rehabilitation Act of 1973 as amended, the Fair Labor Standards Act as amended, Ohio Revised Code Sections 4112.01 et seq. and 4101.17 as amended, Ohio's wage and hour statutes as amended, breach of any express or implied contract or promise, wrongful discharge, violation of public policy, contract, or tort, all demands for back pay, holiday pay, bonuses, vacation pay, group insurance, health plan benefits, any claim for reinstatement, all employee benefits and claims for money, out-of-pocket expenses, any claims for emotional distress, degradation, harassment, humiliation, mental pain and suffering, reputation, reemployment rights, or any other claim arising under any applicable federal, state, or local employment rights, or any other claims arising under any applicable federal, state, or local employment discrimination statute or ordinance, or any other claim, whether statutory or based on common law, arising: (1) by reason of his/her employment with Employer or the termination of that employment or circumstances related thereto; or (2) by reason of any other matter, cause, or thing whatsoever, from the first date of employment to the date of execution of this Agreement that he/she might now have or may subsequently have, whether known or unknown, accrued or unaccrued. Notwithstanding anything contained in this Agreement to the contrary, this Agreement shall not be construed as a

waiver of Employee's rights to any vested benefits under the terms of any tax-qualified employee retirement benefit plan(s) of the Employer in which Employee has been a participant during his/her employment.

5. **Nondisclosure agreement by employer.** Employer agrees that it will make no disclosures concerning the Employee's employment or other information regarding the Employee, except for confirming employment, job title, dates of service, and rate of pay; Plus additional information as, and only as, required pursuant to subpoana or otherwise required by law or for Employer to enforce its rights and benefits under this Agreement.

6. **Nondisclosure of agreement by employee.** Employee agrees not to disclose or make reference to the terms of this Agreement, except to his/her attorney and his/her immediate family, without the prior written consent of Employer. Employee further understands and agrees that he/she shall not hereafter contact or communicate with Employer's employees or former employees regarding the subject matter of this Agreement.

7. **Effect of violations by employee.** Employee agrees and understands that any action by him/her in violation of this Agreement shall void Employer's payment to the Employee of all severance monies and benefits provided for herein and shall require immediate repayment by the Employee of the value of all consideration paid to Employee by Employer pursuant to this Agreement, and shall further require Employee to pay all reasonable costs and attorneys' fees in defending any action Employee brings, Plus any other damages to which the Employer may be entitled. Employee further consents to the issuance of a temporary restraining order, and/or injunction as an appropriate remedy for violation

of this Agreement by Employee, and will not contest the entry of same if a violation is shown.

8. **Denial of liability**. Employer and Employee understand and agree that the payment of the monies set forth in this Agreement does not constitute an admission of liability or violation of any applicable law, any contract provisions, or any rule or regulation, as to which liability all parties expressly deny. This Agreement shall not be admissible in any proceeding except an action to enforce its terms.

9. **Pending claims**. Employee represents and warrants that he/she has not initiated any proceedings or filed any claims, charges, or causes of action in any administrative agency or federal or state court, and shall not institute, initiate or participate in any proceedings, charges, claims, and/or actions against Employer and/or its trustees, officers, employees, and/or agents relating to, or arising out of, or in any way connected with, directly or indirectly, any acts or omissions of Employer and/or its trustees, officers, employees and/or agents which have occurred prior to and including the date hereof concerning or relating to matters occurring during his/her employment with Employer or the termination of that employment.

10. **Severability.** If any provision, or portion thereof, of this Agreement is held invalid or unenforceable under applicable statute or rule of law, only that provision shall be deemed omitted from this Agreement, and only to the extent to which it is held invalid, and the remainder of the Agreement shall remain in full force and effect.

11. **Entire agreement**. Employee agrees that this Agreement constitutes the complete Agreement between the parties and that no other representations have been made by Employer to Employee to induce him/her to enter into this Agreement. Employee agrees that this document resolves all outstanding issues arising from his/her

employment as of the date of Employee's signing the Agreement and that he/she will not receive anything further from Employer. This Agreement can only be modified by a written document executed by both parties.

12. **OPPORTUNITY FOR REVIEW**, EMPLOYEE UNDERSTANDS THAT HE/SHE SHALL HAVE TWENTY-ONE (21) DAYS FROM THE DATE OF RECEIPT OF THIS AGREEMENT TO REVIEW THIS DOCUMENT AND THAT HE/SHE SHALL HAVE THE RIGHT, WITHIN SEVEN (7) DAYS OF SIGNING THIS AGREEMENT, TO REVOKE THIS AGREEMENT. IF EMPLOYEE ELECTS TO REVOKE THIS AGREEMENT, IT SHALL NOT BE EFFECTIVE OR ENFORCEABLE AND EMPLOYEE WILL NOT RECEIVE THE BENEFITS DESCRIBED IN PARAGRAPH 2(A) HEREINABOVE. EMPLOYER AGREES AND EMPLOYEE UNDERSTANDS THAT HE/SHE DOES NOT WAIVE ANY RIGHTS OR CLAIMS FOR ACTS OR OMISSIONS THAT MAY ARISE AFTER THE DATE THIS AGREEMENT IS EXECUTED. EMPLOYEE FURTHER ACKNOWLEDGES THAT EXECUTION OF THIS DOCUMENT IS VOLUNTARY AND THAT HE/SHE HAS BEEN ADVISED TO CONSULT WITH AN ATTORNEY BEFORE EXECUTING THE AGREEMENT, TO ENSURE THAT HE/SHE FULLY AND THOROUGHLY UNDERSTANDS ITS LEGAL SIGNIFICANCE.

13. **Titles.** Titles included in this Agreement are for references only and are not part of the terms of this Agreement, nor do they in any way modify any terms of the Agreement.

14. **Interpretation under state law.** This Agreement shall be construed under the laws of the State of Ohio and shall in all respects be interpreted, enforced, and governed under the laws of the State of Ohio.

15. **Counterparts.** This Agreement may be executed in multiple counterparts, all of which, taken together, will constitute one Agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement, in duplicate, on the date first written above.

IN THE PRESENCE OF: EMPLOYEE:

_____ _____

_____ _____ EMPLOYER:

TOTAL HEALTH CARE PLAN, INC.

_____ BY: _____

DATE

_____ ITS: _____

TITLE

MTF\THCP\SepAgree40older

MEMORNDUM

To: Rotan Lee
From: Wayne Crawford (Initialized WC)
Date: August 3, 1999
Re: NEON Loans and Forgiveness 1994 – 1998

1994

Loans and accrued interest totaled $3,210,313 at December 31, 1994. All dollars were forgiven.

1995

The Company is guarantor on NEON's letter of credit related to the $3,200,000 of Ohio Valuable Rate Demand Healhcare Revenue Bonds, 1992 Series A (Bonds) issued by NEON and has pledged $1,127,789 of investments as collateral. The investments pledged as collateral are treated as nonadmitted assets for financial reporting.

1996

THCP has entered into a loan arrangement with NEON that would allow NEON to borrow up to $1,000,000 in installments as needed for a period up to five years commencing July 1, 1996 and continuing through June 30, 2000. The loan agreement calls for interest at 4.44 percent per annum. NEON's balance as of December 31, 1996 is $500,000.

During 1996, THCP forgave advances to NEON totaling $1,118,080. This amount was charged to operations in 1996.

1997

THCP had no additional activity related to NEON.

1998

The loan agreement balance as of December 31, 1998 is $976,442.

In summary, Forgiveness equals $4,328,593; Loans equal $976,442; and Collateral equals $1,127,789. F

84a APPENDIX Z
[email]

From: Paula Phelps
Sent: Thursday, July 22, 1999 4:03 PM
To: Jim[mmy] Dee
Subject: IT position description

Hey Jimmy-

I've attached a position description for *Network Administrator*. Please note, I have puposely steered clear of any terminology which might suggest supervisory duties. This in an effort to divert any possible legal ramifications which might land us in a court of law. If this is not in line with your thinking, please advise.

Donald has requested that we try and get him a written description by the end of the day.

Please advise.
Thanks...
Paula

85a APPENDIX AA
[email]

From: Paula Phelps
Sent: Thursday, July 22, 1999 5:48 PM
To: Donald Butler
Subject: IT position description

Donald,

I have attached a position description with recommended salary range for a ***Network Administrator*** for **IT**. Please note, deliberately shield away from any language that would imply actual supervisory responsibilities. This done in an effort to divert any potential legal ramifications that might land us in court, due to the fact that the VP position was eliminated as there was no need for a position of that level or responsibility needed any longer.
To recruit for a management-level position, not having offered the VP an opportunity for that role, would be grounds for a lawsuit. Therefore, we need to be very sensitive to the fact that we may already be under scrutiny, as I have yet to hear from the former employee IT VP.

Please advise as to your thoughts...

Paula

E10

86a APPENDIX AB
[email]

From: Rotan Lee
Sent: Friday, June 24, 1999 12:41 PM
To: Christine Burke

Subject: Attention

I am on line. Pay close attention to you[r] email. I am attaching my integrated business proposition format. It will be the platform for assessing a business opportunity. In your case, it will be the format for establishing TOTAL Cleaning, Inc. I want to get the new business up and operating by the late fall, (i.e., no later than Hollowean.)

E8

MEMORANDUM
TO: **ALL STAFF**
FROM: **ROTAN E. LEE [Signed too]**
Chief Executive Officer
RE: **ACTION ITEMS and MANDATES**
DATE: **August 11, 1999**

Karen Butler, Executive Vice President, Corporate Development and Administration is the primary contact with the Ohio Department of Human Services [ODHS]. The secondary contact is Martha Mohammed, Senior Vice President, Internal Auditing. THEREFORE, any and all communication with ODHS, whether by telephone or correspondence, must either come from Karen or be cleared by her. Absent the availability of Karen, Martha must approve all forms of contact with ODHS. Every contact with ODHS, for any reason whatsoever, must be recorded in some way and passed along to Karen for formal recordation. You should view Karen as the CZAR of ODHS contact and response. Martha must only be sought in emergencies. AGAIN, all approvals must come from Karen. She reports directly to Donald Butler, Chief Operating Officer [COO].

Christina Burke, Vice President, Business and Information Services, is responsible for all data coordination, analyses and entry into the Nichols TXEN system. Additionally, she is responsible for the coordination of THCP's technical team that interfaces with TXEN. All data to be entered into the TXEN system must be approved by Christina. She is ultimately, responsible for quality assurance and quality control (QA/QC). Still further, all computers (desk top or lap top) must be registered with Christina; and, she is solely responsible for the allocation of technology equipment

within the plan. Still further, she is responsible for all outsourced or consultive technical support; and in that context, all technology consultants will report to and through her. She reports directly to Donald Butler, COO. Donald is also the chairman of the plan technology team.

Bernard Wilson, Senior Vice president, group Services, will be responsible for the day-to-day operation of that operating component. He reports directly to Donald Butler, COO.

Gisele Rivera, Director of Marketing, will be responsible for the development and implementation of all marketing strategies. Additionally, she is responsible for all member growth and retention. She reports directly to Donald Butler, COO.

DONALD BUTLER, KAREN BUTLER, CHRISTINA BURKE, BERNARD WILSON and GISLE RIVERA have the full power and authority of my office in the conduct and prosecution of their respective roles.

FOLLOW THE PROTOCOLS.

E6-E7

Memorandum

To: Rotan E. Lee

From: Martha Muhammad [Initialized]
Date: 01/07/00
Re: Outstanding NEON issues

As we discussed there are four major issues that require resolution related to NEON from a financial perspective.

1. Note receivable for $976,000 and related interest payments.

2. Release of THCP as guarantor for NEON loan (security pledged is the amount of $1,125,000).

3. Space rental for the East 5th street garage.

4. Space rental, security and telephone charges for the Young building (Convenient Care Center).

Items 3 and 4 require NEON to reimburse THCP for expenses incurred or pay for space occupied. Item 1 is self explanatory. THCP needs to have access to the dollars associated with the note receivable. Item 2 would require a release as gurantor from Key Bank for the NEON loan to make the collateralized security available to THCP.

We can discuss these issues in greater detail next week.

I

MEMORANDUM

TO: **Martha Muhammad, CFO**

FROM: Rotan E. Lee, CEO [signed]

RE: Special Claims Payment
Children's Hospital, Inc., Columbus

DATE: **January 14, 2000**

This is a request for a provider claims check in the exact amount of $250,000. It is to be made out to Children's Hospital, Inc., Columbus, OH, covering inpatient and outpatient claims up to August 1, 1999 and some portion of the current TXEN check- run for processed claims after that date.

Donald Butler and I have been working with hospital executives to reach some accommodation on the outstanding claims liabilities. Donald has developed spread-sheets for the up-to-August 1st inpatient and outpatient claims, and, when fully completed, adjustments can be made to prospective disbursements.

This action is not a settlement of any kind. It is more akin to good faith payment against known and reasonably estimated claims payables.

As you know, I am meeting with hospital executives on Monday, January 17th to discuss a **possible equity infusion into THCP**, simultaneously establishing a long-term institutional affiliation.

I would like you to keep eye in the aftermath of this special claims payment, insuring that all adjustments are made to current and future check-runs to the children's hospital.

Cc: Donald Butler, COO J

APPENDIX AF

TOTAL HEALTH CARE PLAN Inc

(On letter head with logo)

January 14, 2000

John E. Campbell, Chief Executive Officer
Northeast Ohio Neighborhood Health Services, Inc.
8300 Hough Avenue, Cleveland, Ohio 44103

Re: PROMISSORY NOTE, December 1, 1997

Dear Mr. Campbell:

Total Health Care Plan, Inc. (THCP) advocates NEON's capital improvement initiatives. The quality of health care requires well-equipped facilities and comfortable surroundings, a fact particularly important to the African-American community. Too often, black people are beset with sense of second-class service and general short shrift. NEON has always been the exception to that point of view.

This letter's purpose is to allay any concerns as to imminent payment of the full principal and accrued interest of the referenced promissory note (the "Note"). Although repayment is not unimportant to THCP, the plan's intent is to restructure the Note, extending the June 30, 2000 demand under the Note to a time reasonably suitable to NEON. The intent here is to protect THCP's right of recovery while accommodating NEON's need to more efficiently address the debt.

I am hopeful that NEON is able to benefit from the city's empowerment zone opportunities. As stated, upgrading NEON's facilities is crucially important to the community it serves.

Very truly yours,
Rotan E. Lee (Signed), Chief Executive Officer
Cc: Martha Muhammad, CFO, THCP K

CARLILE PARCHEN & MURPHY LLP
(On letter head with logo)
Attorneys At Law
366 Eat Broad Street, Columbus, OHIO 43215
FAX 614/221-0216 Telephone 614/228-6135

May 21, 2001

HAND DELIVERY

Ms. Amy Cress Amerine
Chief Legal Counsel
Law Department
Ohio Department of Insurance
2100 Stella Court
Columbus, OH 43215-1067

Re: Total Health Care Plan, Inc.

Dear Amy:

Conclusion: NEON and Total, Subsidiary Relationship

We have examined: (I) the corporate records of Total Health Care Plan, Inc. (Total); (ii) copies of correspondence and other documents provided by Northeast Ohio Neighborhood Health Services, Inc. (NEON); (iii) copies of corporate documents filed with the Ohio Department of Insurance (ODI) by Total; and copies of documents filed with the Ohio Secretary of State by Total.

We have also talked to Althea Bates the secretary of both Total and NEON during most of the period in question and **with Matt Fitzsimmons the attorney for NEON since about 1993**.

Based on the foregoing and an examination of the relevant law, we have concluded that Total I a subsidiary of NEON.

HOSTORICAL RECORD

On March 17, 1986, articles of incorporation of Total (Appendix 1) were filed with the Secretary of State of Ohio to form a non-profit corporation. The articles make no mention of members, however, that is not required by Section 1702.04 (Chapter 1702) the Ohio non-profit corporation law). The statute does require that the initial trustees be named and they were; James G. Turner, Joseph E. Davis, Emmett J, McQueen, Raymond J. Durn and John Campbell. These persons were all then members of the board of trustees of Cleveland neighborhood Health Services, Inc., presently NEON.

On February 24, 1987, a certificate of amended articles of incorporation (Appendix 2) was filed with the Ohio Secretary of State, and states the purpose of Total:

> This non-profit corporation is organized and chartered under Section 1702 and Section 1742 of the Ohio Revised Code and the purpose for which it is formed is exclusively to operate a health maintenance organization (HMO).

The first page of the certificate of the amended articles of incorporation is a form which is familiar to us as a Secretary of state fill-in-blanks form and does not state that Total is a subsidiary. However, the first page of the actual articles (Appendix 3), filed with the Ohio Department of Insurance, states:

> The undersigned, a majority of whom are citizens of the United States, desire to form a subsidiary Non-Profit Corporation to Cleveland Neighborhood Health Services, Inc., under the non-profit corporation law of Ohio, ...(Emphasis added)

The initial trustees listed in both the certificate and the actual are James Turner, Carl Brewster, Ruth Marek, Gertrude Young, Emmett J. McQueen and Larry Wagner, all of whom were then trustees o the Cleveland Neighborhood Health Services, Inc., presently NEON.

Thc initial code of regulations (Appendix 4) state, in part:

Code of Regulations

Adopted by the Board of Trustees of Total Health Care Plan, Inc.
(subsidiary of Cleveland Neighborhood Health Services, Inc.)

** *

Article IV.
Trustees.

The corporation shall be governed and all authority of the corporation shall be exercised by CNHS, Inc. through the Board of Trustees. Any authority of the Board of Trustees may be delegated by contract or otherwise to such purpose committees or entitles as it may determine. Any authority to show delegated shall remain subject to the review of the Board of Trustees.

***

> The election of Trustees shall be at the election meeting of the Trustees as discussed in © below. The number of members of the Board of trustees shall be five (5). The Board of Trustees shall consist of file members from the presen. CNHS, Inc, Board of Trustees.

We believe "CNHS" can only refer to Cleveland Neighborhood Health Services, Inc., presently NEON. Over the years new codes of regulations were adopted by

the board of trustees, not by NEON. Those versions of the code of regulations do not mention NEON.

The present/subsidiary relationship has never been abandoned by NEON. A late as 1999 it was asserted by John Campbell, CEO of NEON in a letter (Appendix 5) to Brenda Marshall-Stevenson, chairman of the board of trustees if Total dated July 21, 1999.

In addition to the above referenced amended articles of incorporation of 1987 which describe Total as a subsidiary of NEON and were submitted to the Ohio Department of Insurance, other representations have been made to public authorities that Total is a subsidiary of NEON:

- In a letter from the United States Department of Health and Human Services dated May 1, 1987 to the Ohio Department of Human Services (Appendix 6) is found the following language: "I response to your April 3, 1987 letter regarding the health maintenance organization of Total Health Care, Inc., a wholly owned subsidiary of Cleveland Neighborhood Health Services (Hough Norwood)."
- In a undated letter from Patricia Barry, director of the Ohio Department of Human Services to James Turner, president of Total (Appendix 7) is formed the following statement: "Due to the fact that THC is a wholly owned subsidiary of Cleveland Neighborhood Health Services, Inc (CNHSI), and that CNHSI has received federal grant funds previously, THC is exempt from meeting the 75/25 public/private enrollment mix prescribed for most pre-paid health plans with a medicaid enrollment."
- In a letter dated April 3, 1987 from the Ohio Department of Human services, Lon C. Herman,

chief of the Bureau of Alternative Delivery System to Helen Stofey, Division of Program Operations, HCFA, Region 5 (Appendix 8) is found this statement: "Total Health Care, Inc. soon to be licensed as a state defined HMO is a wholly owned subsidiary of Cleveland Neighborhood Health Services (Hough Norwood). They have requested an exemption of the 75/25 enrollment mix requirement based on the attached Bureau of Health Care Delivery and Assistance ("BHCDA") interpretation of the language contained in COBRA Section 95.17."

- A primary care agreement draft received at the Department of Insurance March 5, 1987 (Appendix 9) identifies Total Health Care Plan as "a non-profit subsidiary corporation organized under the laws of the State of Ohio."

Recommendations

We recommend the following actions:

- That the Rehabilitator conclude that Total was, at its formation and remains, the wholly owned subsidiary of NEON and that Total is to be reorganized under ORC §3903.14(D) and then returned to the control of its parent NEON, a tax exempt organization with a similar purpose to that of Total, i.e. funding medical services to the poor, primarily in the Cleveland area. Total would not be licensed as an HMO, but would not be prohibited from applying for such status in the future.
- That as part of such reorganization: (i) the present board of directors be dismissed and a new board of trustees appointed; (ii) the present cod eof regulations be amended by substitution of a new code of regulations; (iii) the present articles of incorporation be amended by substitution of new articles of incorporation; (iv) the **written willing acceptance**

by NEON of responsibility as the parent/member of Total.

- However, if NEON is unwilling to accept responsibility as the parent/member of Total, that the Rehabilitator reorganize Total as outlined above, but with some other non-profit/member with a similar charitable purpose.

Very truly yours,
CARLILE PATCHEN & MURPHY LLP

Richard V. Patchen (Signed)

MEMORANDUM

To: Rotan Lee

CC: Donald Butler, Marilyn Henderson, Wayne Crawford

From: Martha Muhammad
Date: 10/14/1999
Re: Finance meeting – October 14, 1999

Attendees: Rotan Lee, Donald Butler, Marilyn Henderson, Wayne Crawford, Martha Muhammad

Financial schedules were presented outlining the current cash position of THCP compared to outstanding claims payments adjudicated by PBM and TXEN. The total cash shortfall related to claims in check written status at 10/14/99 is $3,089,567. The recommendation was made to liquidate investments to cover the shortfall. We now need to quantify how much cash will be required to bring claims payments current above $3.0 million.

Donald indicated that outstanding unpaid claims currently being processed include the following:

- $.9 million related to members that are potentially not eligible. These claims will be rejected and listed on explanation of payment documents to be forwarded to the provider. Claims related to non-THCP members will be processed through Medifax and returned to the provider.
- $.4 million related to providers not in the PBM system or the ODHS provider file.
- $.3 million related to invalid procedure code issues.

The total liability associated with in-process claims is estimated at $1.0 million.

Rotan requested an analysis of projected medical and administrative expenses forecasted through August 2000 with the objective of determining the duration of extraordinary administrative expenses and, to track ordinary versus extraordinary administrative expenses. The projection model also should include cash/investment balances and IBNR valuation. Ultimately, a target date should emerge pinpointing when to expect losses to end.

Effective immediately, Rotan issued a directive that no expenditures are to be made without approval from Donald Butler.

S

APPENDIX AI

MEMO

TOTAL HEALTH CARE PLAN, INC

To: Rotan E. Lee, Esq., Acting CEO
From: Martha Muhammad

Date: 4/14/1999
Re: Scheur Management Group Agreement

I have reviewed the "Agreement for Management Services" between Total Health Care Plan, Inc. and Scheur Management Group, Inc. and have a number of issues to bring to your attention relative to the "Terms" section, as outlined in the agreement.

Page 2 and 3 of the agreement specify the areas of expertise to be provided by Scheur, and the individuals responsible for delivering services. Robin McElfatrick was represented to the Plan as a claims expert and was to work with Robert Eichler (IT) to work through operational issues related to the claims processing system. From the week of March 15th through April 12th (approximately), Ms. McElfatrick was not available to lend her assistance on this project to the extent THCP required. Scheur identified a knowledgeable claims administrator Marilyn Bryant, to function in the capacity of claims consultant. At this point, Scheur had no onsite representation in this critical area.

To date, THCP has paid Scheur the contracted monthly fee for providing ""Transitional Management Services", which were to be all-inclusive, including direct expenses incurred to conduct this engagement. Scheur has also instructed the THCP Finance staff to pay invoices for services rendered by Ms. Bryant in the amount of $6,366.32, at the rate of $56.25 per hour plus travel

expenses. These services should be a part of the management fee as this i I part of deliverable management services under contract, and not an additional outlier cost for THCP.

The THCP Information Technology (IT) function has required additional on-site support resolve a variety of issues including the claims outsourcing project. To date THCP has been presented with an invoice for IT support rendered by Scheur professionals in the amount of $15,000. Again these services appear to be a part of the scope of the services provided under the management agreement.

V

Northeast Ohio Neighborhood Health Services, Inc (On letter head with emblem and Matthew Fitzsimmons name as Second Vice Chairperson to the Trustees)

May 25, 2000
Via Fascimile (216) 991-3011 & US Mail

Dr. Brenda Stevenson Marshall, Chairperson

Board of Trustees
Total Health Care Plan, Inc
12800 Shaker Boulevard
Cleveland, Ohio 44120

Re: ***Demand of Loan Repayment***

Dear Dr. Marshall:

I received your correspondence dated May 22, 2000, and enclosures, late Wednesday afternoon, May 24, 2000. NEON's Board of Trustees and I are saddened by the latest positions of Total Health Care Plan, Inc. ("THCP") on various maters of mutual interest.

My correspondence to you dated May 4, 2000 (attached) requested clarification of your proposals. In particular, NEON was and is quite concerned that it could be legally obligated for a sum in excess of $2,000,000 if NEON's Note remains intact (albeit with a new maturity date) and the proposed Surplus Note is called by ODI following the possible cessation of business of THCP by the administrative actions of ODI or revocation of THCP's contract with ODHS. THCP has never responded to the inquiries in my May 4th letter. Without the above-referenced clarification, I could not make an informed presentation to the Trustees.

THCP is now turning its back on the various representations officers of THCP made to NEON of THCP's agreement to extend the maturity date, evidenced by Rotan E. Lee's letter of January 14, 2000 (attached). THCP's demand of notification by the close of business on May 26, 2000 on how payment will be made on a Note due on June 30, 2000, and the threat that THCP will pursue collection of a future debt by offsetting the loan value against NEON" monthly capitation payment until the debt is retired, is unreasonable, unlawful, and offensive to us. NEON has a history of meeting its obligations.

Absent its consent, NEON will file an administrative complaint with ODHS and take all legal means available in the event THCP attempts to withhold or forego capitation payments over a matter totally unrelated to patient's or members' health care services under our provider contracts. NEON cannot believe THCP would want another disgruntled provider in light of the administrative matters pending with ODHS.

THCP should be well aware that NEON has never asserted a legal claim for services of NEON personnel to THCP and rental of THCP equipment and real estate over the years. NEON entered into the Loan Agreement with THCP to provide THCP with some recourse to recover loans in the event that NEON's legal and financial difficulties would result in the liquidation of NEON. Mr. Turner understood the need to forgive this debt at the appropriate time in recognition of NEON's meaningful financial contributions to THCP, including start-up funds.

Somehow as a result of Mr. Turner's death, resignation and replacement of trustees on THCP's board, and severe financial difficulties of THCP, this truth has been denied. NEON will assert a vigorous legal defense and claim for reimbursement of past services of its personnel and rental of equipment and real estate, which

can be documented if THCP initiates any legal action against NEON.

NEON is under no legal obligation to obtain the release of THCP's collateral from key Bank. NEON discussed its willingness under certain conditions to do so as an effort to assist both parties. THCP's position expressed in your letter of May 22, 2000 would certainly eliminate any efforts by NEON to assist THCP.

In closing, NEON is aware of THCP's plight, and is quite concerned. THCP needs NEON and NEON needs THCP. That should be self-evident. THCP's threatening legal action against NEON will severely weaken NEON and will not provide any real solution to THCP's life and death struggle. THCP must be completely candid with NEON as to all matters pertaining to ODI and ODHS to obtain NEON's assistance.

NEON requests another meeting, as quickly as possible, to attempt to resolve these matters. I look forward to hearing from you.

Sincerely,
John E. Campbell (Signed)
Chief Executive Officer

Attachments (2)

O1-O3

IN THE COURT OF COMMON PLEAS
CUYAHOGA COUNTY, OHIO

Prasad Bikkani **3043 Forestlake Dr** **Westlake, OH** **44145** **Plaintiff** **Vs** **Rotan Lee et al.**	)))))))))	**CASE No. CV05-566249** **Judge David T. Matia** **Clerk of Courts Time Stamped: June 21, 2006 12:48pm and Cuyahoga County Sheriff Dept Time stamped June 21, 2006 1:06pm**

Clerk of Court:
The following party was identified as John Doe for the most extent in the original complaint and now verified, as a proper defendant by confirming the predicate acts and other acts related to the complaint. Earlier attempted to serve but caption didn't show now added under Amended Complaint. Please add the following defendant and send Summons by 'Sheriff's Service'. Please serve at both the locations as the Residence address might have changed.

Residence Address:	Address2:
Matthew T. Fitzsimmons **NEON Board Member & Scheur Holder** 19687 Beach Cliff Blvd Rocky River, OH 44146	Matthew T. Fitzsimmons **NEON Board Member & Scheur Holders** Nicola, Gudbranson & Cooper, LLC 25 West Prospect Avenue Cleveland, OH 44115-1048

Respectfully submitted,
Prasad Bikkani, Pro Se C1